

LEGEND State of the Debate Report 2016

Strengthening Land Governance: Lessons from implementing the Voluntary Guidelines *

* The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

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with Giles Henley

MAY 2016

APUROMPAMO ZUBOTAKA

EPI: 43/14KABU/241

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Citation: Ruth Hall and Ian Scoones with Giles Henley (2016) Strengthening Land Governance: Lessons from implementing the Voluntary Guidelines. LEGEND State of the Debate Report 2016.

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants, MoUs and contracts, and supported by a Core Land Support Team.

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Abbreviations and acronyms

ADC	Austrian Development Cooperation
AfDB	African Development Bank
ASA	Alianza por la Soberanía Alimentaria de América Latina y el Caribe
AU	African Union
AU GPs	AU Guiding Principles on Large-scale Land-based Investment
CAADP	Comprehensive Africa Agricultural Development Programme
CSO	Civil Society Organisation
CCSI	Columbia Center on Sustainable Investment
CDC	Commonwealth Development Corporation
CFS	Committee on World Food Security
CFS-RAI	CFS Principles on Responsible Investment in Agriculture and the Food System
CLST	Central Land Support Team
CSM	Civil Society Mechanism
DFID	UK Department for International Development
EU	European Union
F&G	Framework and Guidelines on Land Policy in Africa
FAO	Food and Agricultural Organization of the UN
FARC	Revolutionary Armed Forces of Colombia
FIAN	Food First Information and Action Network
FPIC	Free, Prior and Informed Consent
GDWGL	Global Donor Working Group on Land
GIZ	German Agency for International Cooperation
GLII	Global Land Indicator Initiative
GLTN	Global Land Tool Network
IAN	TMP Systems' risk management platform
IDRC	International Development Research Centre (Canada)
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
IIED	International Institute for Environment and Development
ILC	International Land Coalition
INGO	International NGO
IPC	International Planning Committee for Food Sovereignty
LAT	Legal Assessment Tool
LEGEND	Land: Enhancing Governance for Economic Development
LGAF	Land Governance Assessment Framework
LPI	Land Policy Initiative (AU, AfDB and UNECA)
M&E	Monitoring and Evaluation
Mercosur	Common Market of the South
MRLG	Mekong Region Land Governance
NELGA	Network of Excellence on Land Governance in Africa
NEPAD	New Partnership for Africa's Development
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PLAAS	Institute for Poverty, Land and Agrarian Studies (South Africa)
PSM	Private Sector Mechanism
REC	Regional Economic Commission

RIPL	Responsible Investments in Property and Land
RRI	Rights and Resources Initiative
RSB	Roundtable for Sustainable Biomaterials
SDC	Swiss Agency for Development Cooperation
SDG	Sustainable Development Goal
SOLA	Solutions for Open Land Administration
TG	Tenure Guidelines
TNI	Transnational Institute
UK	United Kingdom
UN	United Nations
UNECA	UN Economic Commission for Africa
UN-Habitat	United Nations Human Settlements Programme
UNDP IPC-IG	International Policy Centre for Inclusive Growth of the United Nations Development Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WCARRD	World Conference on Agrarian Reform and Rural Development

Preface

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) are a globally agreed standard. Achieving this normative consensus in an inclusive and participatory process in the Committee on World Food Security (CFS) was an enormous achievement and one to which the UK is proud to have contributed.

The UK is committed to promoting the VGGT and to supporting initiatives to strengthen implementation and monitoring, as part of its commitment to addressing poverty and food security globally, and to improving accountable and transparent governance of natural resources. Much more remains to be done for the principles of the VGGT to be realised in practice, and to translate into better, more land secure rights for women, indigenous people and others whose rights are marginalized, and into transparent and democratic land governance.

In pursuit of this commitment, the UK has created the Land: Enhancing Governance for Economic Development (LEGEND) programme to provide a unique contribution towards improved knowledge and practice as a global public good. LEGEND aims to mobilise knowledge and capacity for design and delivery of new country programmes, improve land governance as an essential and inclusive basis for economic development, and strengthen land and property rights at scale. Through building policy coherence globally and stimulating innovation across civil society, private sector and sector at country and local levels, LEGEND aims to improve the quality and impact of land investments of all kinds so they contribute sustainably to growth while safeguarding rights and opportunities for poor people — rural and urban — especially women.

The State of the Debate report will be an annual contribution from the LEGEND programme towards

global discussions about how to realize improved land governance.

This first report addresses the VGGT and takes stock of implementation initiatives around the world in order to derive lessons and offer recommendations. As part of our global land work and the LEGEND programme, the focus of this report is on progress towards the responsible governance of tenure of land – rather than forestry and fisheries – though there are many implementation initiatives that address resource tenure more generally.

Entrenching the VGGT as the global standard is an urgent priority. The post-2015 global development agenda provides a crucial opportunity to do so. This is why the UK has actively promoted the inclusion of a land indicator for the Sustainable Development Goals. Also urgent is taking forward the work of entrenching the VGGT in regional and national processes.

Secure land and other property rights will remain a key pillar of our economic development work over the coming years. This includes international programmes like LEGEND but also direct work to secure land rights for poor men and women, and for responsibly operating businesses; support for improved urban land use; commercial agricultural investments in line with our new Agricultural Policy that deliver impact and do no harm; support for improve natural resource management overall and more climate-smart land-based interventions.

We at the UK Department for International Development hope that this report will stimulate debate and inspire action.

Iris Krebber
DFID LEGEND Management

Acknowledgements

This report was made possible through the support of the UK government's Land: Enhancing Land Governance for Economic Development (LEGEND) programme. The authors wish to thank the UK Department for International Development (DFID) for its support in the work, and particularly Iris Krebber for driving the LEGEND process. For helpful comments on earlier drafts of this report, we wish to thank our partners in the Central Land Support Team and the Knowledge Management

Team – especially Anna Locke, Julian Quan, Lorenzo Cotula and Nathan Hill. We also thank Sean Willmott of the Overseas Development Institute for creating the maps and timeline infographic, Roo Griffiths for expert and rapid copyediting and Nick Martin for meticulous design and layout. All interpretations, errors and omissions are the authors' own.

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Executive summary

The Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) are a globally negotiated and agreed framework endorsed in the Committee on World Food Security (CFS) on 11 May 2012.

The VGGT represent a political agreement on the minimum standards for land governance, combined with an authoritative interpretation of international law. While in legal terms the VGGT are voluntary, they constitute a global consensus on a set of norms. They reflect knowledge and lessons learnt from decades of work on land tenure and governance of natural resources. Donors, governments, civil society bodies and others contributed their experiences and insights into the drafting and negotiations processes.

Now, four years on, what has been done to realise these principles? What are the current debates surrounding implementation of the VGGT? What challenges and obstacles have emerged, and how are they being addressed and resolved in different contexts? What are the ways forward for different stakeholders? This Land: Enhancing Governance for Economic Development (LEGEND) State of the Debate report discusses these questions.

The report presents a review of initiatives to implement and realise the principles of the VGGT, analyses some of their strengths and weaknesses and offers recommendations on the way forward. This is based on an extensive review of existing documents; material and perspectives shared at several international conferences and colloquia; and interviews with many key participants in the formulation and implementation of the VGGT. We present the main initiatives taken by diverse stakeholders to use, institutionalise and entrench the VGGT at local, national, regional and international levels. The report focuses on five broad strategies: awareness-raising, capacity-building, national programmes, regional partnerships and monitoring and evaluation (M&E).

Implementation initiatives

From a wide spectrum of initiatives to implement the VGGT, we present a number of case studies to illustrate how different actor groups have promoted and used the Guidelines and the diversity of strategies pursued and partnerships established. These include intergovernmental partnerships to align national laws and policies; multilateral processes to operationalise the guidelines;

activities to draw private sector companies into initiatives and align national legal and policy frameworks; and ‘bottom-up’ initiatives, led by civil society. Each has strengths and limitations, each comes from a different standpoint on the role of the VGGT in land governance and each has its own set of challenges and emerging lessons.

Key debates about VGGT implementation

Across the world, people are debating how the VGGT can bring about meaningful change in how poor people’s tenure of land, fisheries and forests is governed, and so improve their livelihoods and reduce poverty.

On the basis of this review of implementation, and perspectives from people and institutions involved in promoting the VGGT, we identify some of the key debates:

- As ‘soft law’, how can the VGGT change power relations and influence ‘hard law’ that is enforceable at national level?
- To what degree have the VGGT prompted new initiatives and to what extent are existing programmes simply being rebranded as VGGT implementation?
- Is there too much emphasis on strengthening governance rather than transforming land relations and achieving more equitable access to land?
- Have efforts to pressure and assist private sector actors deflected attention from working with governments to comply with the VGGT?
- Are the expectations of what private sector companies need to do to adhere to the VGGT realistic and how can compliance be regulated, incentivised and supported?
- How can the multiplicity of initiatives cohere and what need – and possibility – is there for stronger coordination?
- How can innovative approaches and successes in localised interventions be scaled up and inform policy reforms?
- How can VGGT implementation become more embedded in regional and national contexts, and how can lessons be learnt across and within regions?

- What monitoring of implementation and compliance is needed globally, how can this be done and who can do it?

Recommendations

Reflecting on what has been done – and where there have been some gaps in implementation – we present a broad assessment and offer a set of recommendations about how implementation can be strengthened, deepened and broadened; how coordination might be improved; and how monitoring systems to increase enforcement and oversight could be supported.

Specific recommendations are made with regard to what donors, international non-governmental organisations, civil society groups and social movements, the private sector and multilateral and financial institutions can do. These are based on several arguments about areas in which implementation needs to be strengthened:

- Still to be strengthened are ways to broaden and increase participation in the international benchmarking of country-level laws, policies and practices against the VGGT.
- If the VGGT are to influence national policies, especially in countries where political economy dynamics mean governments do not take the initiative, then there needs to be massive expansion of community mobilisation to take up the VGGT.
- Cross-sectoral initiatives and partnerships have already produced results, and more innovation in this area is needed to broaden their reach and strengthen impact.
- Also needed is the promotion and careful use of technologies for recording land rights, through participatory processes and involving ethnographic research expertise. Consideration is needed of how to use these experiences to record rights at scale, and the necessary legal, policy and institutional frameworks this would require.
- There is potential to further build on the synergies between regional and global frameworks to benchmark countries' progress towards realising the VGGT principles, using the Sustainable

Development Goal land indicators and the legal assessment tools that have been created.

- Building capacity also requires institutionalising land governance in universities and other institutions of higher learning, in research as well as in academic and professional training, to conduct research and to forge partnerships with development agencies, governments and civil society.

LEGEND initiatives and activities to support VGGT implementation

The second section of the report summarises initiatives supported through DFID's LEGEND programme that promote better land governance.

LEGEND partners produce tools, information platforms and research that – through improving global information and knowledge on land governance, and promoting better private sector investment in land – contribute to implementation of the VGGT. Partners' activities cover a wide range:

- promoting transparency and the publication of land contracts
- conducting perception surveys on tenure security and good governance
- local tenure interventions and litigation
- national assessments of land rights laws and policies
- regional partnerships to work with governments and civil society and national and global campaigns

Under LEGEND, a Challenge Fund has been established to pilot VGGT-aligned due diligence and other innovative and multi-stakeholder approaches to promote responsible land-based investment.

In this report, we summarise the work done and new initiatives underway, as well as introducing the resource materials and toolkits developed to assist various actors – governments, investors, activists and others – to promote compliance with the VGGT in diverse contexts.

Section 1.

The State of the Debate

Ruth Hall and Ian Scoones

1. Introduction

The Committee on World Food Security (CFS) endorsed the [Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#) (VGGT) on 11 May 2012. This was a landmark moment in global recognition of tenure of natural resources as a human rights issue. The Guidelines provide both substantive and procedural assistance in terms of how to address tenure issues. While dealing with forests and fisheries as well as land, they represent the first global consensus on fundamental principles that should underpin land tenure and land governance. The VGGT therefore constitute a ‘global public good’ that has received widespread support among governments, international development agencies and civil society organisations (CSOs), among others.

The challenge remains to convert this consensus on principles into implementation in global, regional and national governance frameworks, and to anchor legal, policy and institutional reforms through action in defence and support of land rights at local level.

Giving poor and vulnerable people secure and equitable rights to access land and other natural resources is a key condition in the fight against hunger and poverty. It is a historic breakthrough that countries have agreed on these first-ever global land tenure guidelines. We now have a shared vision.’
FAO Director-General José Graziano da Silva.

1.1. The origins and objectives of the Guidelines

The VGGT set out principles for the governance of tenure of land, fisheries and forests in support of the progressive realisation of the right to food. They also address tenure security for the purposes of poverty alleviation and sustainable environmental management. The VGGT constitute a global tenure rights framework against which laws and policies at country level may be evaluated, and a reference point for assessing governance practices. They represent a political agreement on the minimum standards for land governance, combined with an authoritative interpretation of international law.

The VGGT establish a non-binding framework for the promotion and assessment of the governance of tenure of land, fisheries and forests. They explicitly link the strengthening of tenure governance to both national food security and the reduction of conflict and extreme poverty,

with a focus on vulnerable and marginalised people. While the VGGT identify governments as primarily responsible for their implementation, they set out the responsibilities of different groups, including private companies and investors. They also promote the creation of multi-stakeholder platforms at local, national and regional levels to guide in strengthening governance of tenure.

The VGGT emerged from a convergence of global initiatives to address land rights, agrarian reform and the right to food. They build on the [Voluntary Guidelines to Support the Progressive Realisation of the Right to Adequate Food in the Context of National Food Security](#) (the ‘Voluntary Guidelines on the Right to Food’) of 2005 by providing a framework for improving the governance of tenure. The timing of the VGGT process coincided with the rapid growth of large-scale transnational land deals and critiques of corporate ‘land-grabbing’. Although their ambit is far broader, this meant debates on how to govern land deals and address land concentration and its effects on tenure were central to framing the Guidelines.

1.2. The VGGT process

The development of the VGGT involved widespread participation, made possible through inclusive negotiations within the Food and Agricultural Organization’s (FAO’s) CFS. Following the reform to the CFS in 2009, social movements, farmer associations, CSOs and private sector companies participated alongside representatives of states. For the first time, a multilateral institution drew together this broad range of participants to address tenure rights and land governance (Seufert, 2013). The VGGT thus emerged from a long negotiation with the benefit of widespread legitimacy across diverse groups.

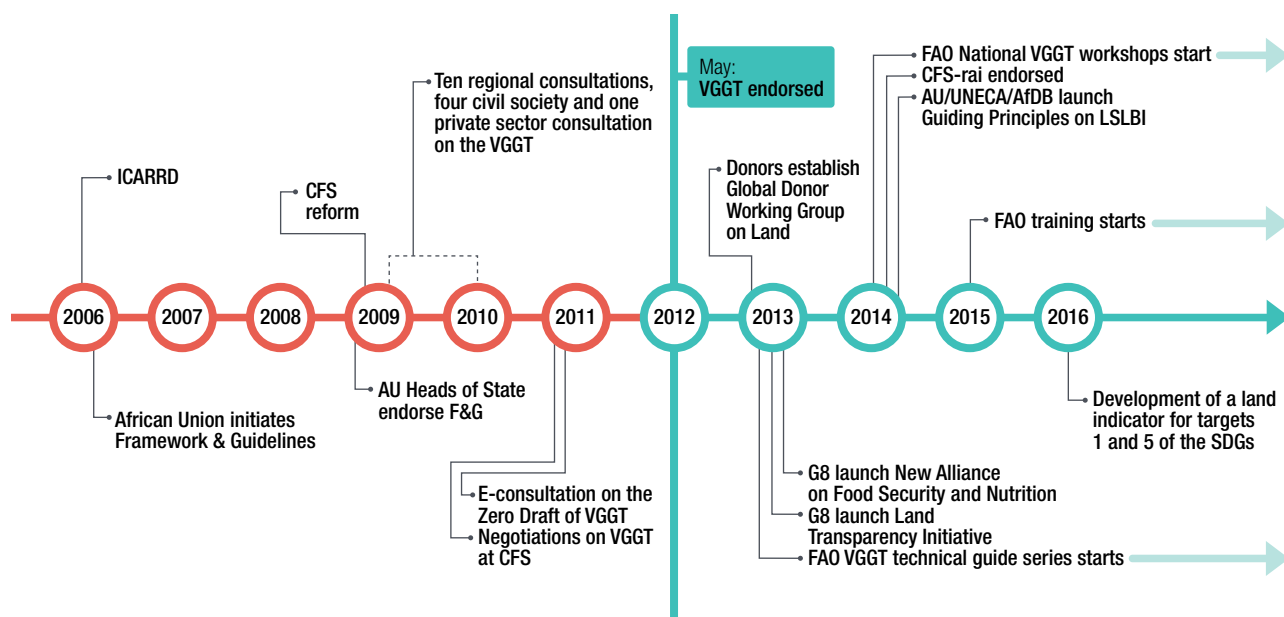
The final Guidelines, however, were also necessarily a compromise, with multiple interpretations possible. As a ‘soft law’ instrument within the wider framework of international human rights, debates centre on how they can gain traction to achieve real change. Struggles over interpretation and implementation are now unfolding among competing political interests, with varied results in different contexts (McKeon, 2013, 2014). Assessing impact and monitoring progress must take these origins and contexts into account.

The key steps towards the development of the Guidelines were a series of regional consultations over a period of about two years; the development of a first technical

document; and then the publication of a zero draft and the start of negotiations in the CFS over a period of more than 18 months (see Figure 1). Approximately 190 governments, as well as civil society and private sector groups, participated in the negotiations. The technical document was thus negotiated in a political body, and it was shaped

in ways that reflect the different ideological and political views among those participating. While many agree the VGGT is not a perfect technical document, it sufficiently reflects the priorities of key actor groups.

Figure 1: Timeline of key events



For some groups participating the development of the VGGT, this was a continuation of and comprehensive response to the Voluntary Guidelines on the Right to Food of 2005, which had drawn connections between land tenure and the right to food. These stated that, ‘States should take measures to promote and protect the security of land tenure... States should consider establishing legal and other policy mechanisms... that advance land reform to enhance access for the poor and women’ (Voluntary Guidelines on the Right to Food, Section 8.10, Guideline 8B).

The idea of establishing global guidelines on governance of tenure was also shaped in part by the [International Conference on Agrarian Reform and Rural Development \(ICARRD\)](#) at Porto Alegre, Brazil, in March 2006 – the most significant global event of its kind since the World Conference on Agrarian Reform and Rural Development (WCARRD) in 1979. Secure resource tenure was a central element of the framework for promoting agrarian reform. Here, social movements were able to participate on equal terms with states and other parties in order to shape the agenda and outcome, establishing principles of broad civil society participation and autonomy within a multilateral process.

In the VGGT process, as a result, farmers, pastoralists and fisherfolk were influential in both the initial regional consultations and the negotiations within the CFS. These principles were institutionalised in the [Civil Society Mechanism \(CSM\)](#) in the reformed CFS, through which the International Planning Committee for Food Sovereignty (IPC) coordinated civil society participation. At the same time, a [Private Sector Mechanism \(PSM\)](#) was established, with a secretariat in the [International Agri-Food Network](#), to facilitate the participation of private companies and investors in the CFS negotiations. With members across the agricultural and food value chains, the PSM’s role was to coordinate consultations with businesses, to develop joint positions and to take these into the CFS negotiations. Both the CSM and the PSM continue to play their respective roles of coordination and leadership in order to give coherence to the multi-sectoral character of the reformed CFS.

The VGGT reflect knowledge and lessons learnt from decades of work on land tenure and governance of natural resources. Donors, governments, civil society bodies and others contributed their experiences and insights into the drafting and negotiations processes.

An [analysis of the process](#) through which the Guidelines were developed, as seen by stakeholders, points out how

‘the process managed to create a core group of people and their organizations who were contributing to, supporting and following it since the beginning. This certainly created leverage for expanding the partnerships at later stages of the process’.

1.3. The VGGT principles

The VGGT establish global norms for how tenure and its governance should be addressed in law and in practice. It identifies the principles that are to guide policy development and law reform and are to be interpreted in specific regional, national and local settings.

The VGGT principles address a broad range of issues under six themes:

1. **general matters**, including guiding principles of responsible tenure governance; rights and responsibilities; policy, legal and organisational frameworks; and delivery of services
2. **legal recognition and allocation of tenure rights and duties**, including safeguards; public land, fisheries and forests; indigenous peoples and other communities with customary tenure systems; and informal tenure
3. **transfers and other changes to tenure rights and duties**, including markets; investments; land consolidation and other readjustment approaches; restitution; redistributive reforms; and expropriation and compensation
4. **administration of tenure, including records of tenure rights**; valuation; taxation; regulated spatial planning; resolution of disputes over tenure rights; and transboundary matters
5. **responses to climate change and emergencies**, including climate change; natural disasters; and conflicts with respect to tenure of land, fisheries and forests
6. **promotion, implementation, monitoring and evaluation**

The VGGT also establish 10 principles that should guide implementation:

1. **human dignity**: recognise the inherent dignity and the equal and inalienable human rights of all individuals
2. **non-discrimination**: no one should be subject to discrimination under law and policies as well as in practice
3. **equity and justice**: recognised that equality between individuals may require acknowledging differences between individuals, and take positive action to promote equitable tenure rights for all
4. **gender equality**: ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating *de facto* equality when necessary
5. **holistic and sustainable approach**: recognise that natural resources and their uses are interconnected, and adopt an integrated and sustainable approach to their administration
6. **consultation and participation**: engage with and seek the support of those who could be affected by decisions, prior to decisions being taken, and respond to their contributions; take into consideration existing power imbalances between different parties and ensure active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes
7. **rule of law**: adopt a rules-based approach through laws that are widely publicised in applicable languages, applicable to all, equally enforced and independently adjudicated
8. **transparency**: clearly define and widely publicise policies, laws and procedures in applicable languages, and widely publicise decisions in applicable languages and in formats accessible to all
9. **accountability**: hold individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law
10. **continuous improvement**: improve mechanisms for monitoring and analysis of tenure governance

2. Uptake by different actors

States and a diverse array of non-state actors agreed to the VGGT principles on governance and implementation in the CFS in 2012. While in legal terms they are voluntary, the VGGT constitute a global consensus on a set of norms. Across the world, people are debating how the VGGT can bring about meaningful change in how poor people's tenure of land, fisheries and forests is governed, and so improve their livelihoods and reduce poverty.

Now, four years on, what has been done to realise these principles? What are the current debates surrounding implementation of the VGGT? What challenges and obstacles have emerged, and how are they being addressed and resolved in different contexts? What are the ways forward for different stakeholders?

The VGGT have given rise to an enormous variety of implementation initiatives. Some are government-to-government initiatives, such as between G7 governments and governments in developing countries; others are government-to-CSO partnerships; and others involve partnerships between governments, CSOs and private sector companies and financial institutions. FAO has a very substantial programme of work, developing technical guides, training modules and national awareness-raising workshops, while also coordinating many implementation initiatives in partnership with national governments in priority countries. The Global Donor Working Group on Land (GDWGL) has coordinated and made public its members' donor programmes that support the state, civil society and public sectors.

At the same time, there are limits to the degree to which it is possible to say how the VGGT are being used and promoted. Much work is being done 'under the radar' by activists, policy-makers, researchers and others to promote the VGGT but, in the absence of specific formal and donor-funded programmes, or promotion through reports, websites or social media, these efforts to use the VGGT to bring about change go largely unrecorded.

This section looks at several types of implementation initiative that are formally established and publicised and provides further discussion on their focus and implications.

2.1. Global donor agencies

The GDWGL was established in 2013 to coordinate donor programmes in support of the VGGT and to embark on joint activities in support of realisation of the VGGT principles. Supported by the Global Donor Platform on Rural Development, the GDWGL is built on prior collaboration among bilateral agencies within the European Union (EU) in support of implementing the EU Land Policy Guidelines of 2004. After endorsement of the VGGT, FAO, the International Fund for Agricultural Development (IFAD), the World Bank, the UN Human Settlements Programme (UN-Habitat), the International Finance Corporation (IFC) and development agencies of the US, Japan and Canada, among others, joined these European government agencies. The GDWGL now comprises 23 bilateral and multilateral members and is open to further accessions.

The GDWGL has intervened in the post-2015 development agenda to promote a land indicator in the Sustainable Development Goals (SDGs) (see Box 9). The GDWGL has established a joint [online database and interactive map](#) that records the details of donor programming on land governance, covering 714 projects totalling \$8.4 billion across 134¹ countries. The donor group recently commissioned [four studies](#) to assess and provide strategic direction on how donors can improve technologies, multi-stakeholder partnerships, corporate performance standards and coherence among funded programmes. These priorities are also reflected in the donor group's workplan for 2016, which sets out plans to pursue more joint funding partnerships and strengthen coordination at country level.²

A founding principle for bilateral institutions in the donor group was the commitment of the G7 countries to aligning their development assistance with the VGGT. Bilateral partnerships between national governments and the G7 have focused on entrenching the VGGT in national legal and policy frameworks and on making key documents publicly available online.

1 <https://landgov.donorplatform.org/> (accessed 22 April 2016).

2 Personal communication: Romy Sato, Secretariat, GDWGL.

'The creation of the Global Donor Working Group on Land shortly after the Voluntary Guidelines was really significant... a breath-taking achievement. I couldn't believe that we got agreement among this group to come together, despite differences among us. While recognising that the private sector and civil society have to do their own things, this group would straddle these different opinions. There was an important alignment of objectives and agendas there.'

Gregory Myers, World Bank (US Chair of VGGT negotiations at the CFS).

2.2. Multilateral and financial institutions

FAO has been a central actor in implementation initiatives, often through partnerships with other multilateral agencies, but also with governments, civil society and others. Its awareness-raising, capacity-building and national partnerships have seen the production of a wide range of resources and tools, and these form the basis for FAO's reflections on lessons learnt. One repository of such reflections is its [FAO Land Tenure Journal](#), which compiles experiences and analysis of diverse land reform initiatives. After publication of a [special issue on the VGGT](#) in 2012,

several later issues deal with themes addressed in the Guidelines, such as fisheries and disaster risk management. In addition to FAO, other multilaterals have also started to incorporate the VGGT into their work, which is reflected in the donor map.

Donors, multilateral institutions and financial institutions have developed a range of guidance products that apply the VGGT to various actors and sectors. These include resources to guide private sector investment and agricultural value chains, including the Organisation for Economic Co-operation and Development (OECD) [guidelines](#) promoted at the OECD Global Forum on Responsible Business Conduct in June 2015 in Paris. In addition, [the World Bank and IFC have endorsed the VGGT](#) and are in the process of integrating its provisions into their 'safeguards' policies, including on involuntary resettlement. [The UN Committee on the Elimination of Discrimination against Women](#) has also entrenched the VGGT principle of gender equality in a 'general recommendation' on the right of rural women, which uses the VGGT as a standard for gender mainstreaming and gives assistance on how states must address gender issues in all agricultural and rural development.



Liberia palm oil plantation. Photo: © Marco Diliuara

Box 1: Multilateral partnerships: the case of Sierra Leone

Sierra Leone is the focus of a concerted effort to strengthen land, fisheries and forestry governance to address gaps in law and practice – especially consultation and participation in tenure governance reforms. Catalytic drivers of the Sierra Leone partnership included the Land Transparency Initiative, which led to a trilateral G7 Land Partnership between Germany, Sierra Leone and FAO. The government took this up as part of a wider VGGT initiative driven by the minister of agriculture, forestry and food security, who had been closely involved in the negotiations at the CFS.

Following conclusion of a multilateral memorandum of understanding under the G7 Land Partnership and the setting up of a VGGT multi-stakeholder platform, an institutional framework for VGGT implementation was established. This consists of a VGGT secretariat and a multi-stakeholder technical working group and steering committee and is led by an inter-ministerial task force, involving the Ministries of Agriculture, Forestry and Food Security; Lands, Country Planning and the Environment; Fisheries and Marine Resources; Justice; and Local Government and Rural Development. The taskforce oversees the integration of the VGGT into a range of new policies and laws, including the new [National Land Policy](#), approved by Cabinet in November 2015.

Two elements of this partnership in Sierra Leone make it a new departure for VGGT implementation. First, this is a comprehensive country programme that combines support for policy reform and for strengthened practice, and does so across all areas of the VGGT – unlike other country interventions, which are either thematically focused or address either policy change or practice. Second, the joint programme is using the World Bank Land Governance Assessment Framework (LGAF) as an assessment framework for the VGGT, making Sierra Leone a testing ground for convergence of the VGGT and LGAF.

The first step towards implementing the VGGT in Sierra Leone was the creation of a multi-stakeholder platform to identify priorities for the land, fisheries and forestry sectors. At its first workshop in April 2014, participants called for an assessment of the country's tenure-related laws and governance systems, to identify gaps in terms of the requirements of the VGGT and to make recommendations. FAO's legal department then conducted such an assessment using its [Legal Assessment Tool](#), and the World Bank conducted a review using its LGAF tool and methodology. An [analysis of the current status of Sierra Leone's land, fisheries and forestry governance](#) has since been conducted and published. This identifies gaps and inconsistencies with the VGGT, and with the Voluntary Guidelines on Small-Scale Fisheries, and recommends changes to laws, policies and institutional arrangements required for Sierra Leone to comply with provisions across these three sectors. Women's tenure rights, access to justice and rights to inclusive and consultative participation in decision-making are among the main gaps noted, and recommendations are made for the government to address these under the aegis of the G7 Land Partnership.

The outcomes of these dual assessments were shared with the multi-stakeholder platform during its second workshop in September 2015, at which a concrete action plan was formulated, to identify responsibilities and implement the recommendations. The VGGT Technical Working Group follows up on implementation of this action plan.

With UK Department for International Development (DFID) support, [Open Land Contracts](#), an online database of publicly available land, agriculture and forestry contracts, launched in October 2015. As part of the Land: Enhancing Governance for Economic Development (LEGEND) programme, the [Columbia Center on Sustainable Investment](#) (CCSI) has worked with the government of Sierra Leone to promote transparency of the contracts (i.e. disclosure of original documents) as well as in the contracting process, and thus far has secured agreement that the government will disclose all government contracts for land acquisitions (over 80 contracts). The purpose is to drive greater transparency and accountability in land transactions. One of the main challenges is to partner with governments that wish to disclose contracts in the interests of transparency.

While it may be too early to assess the outcomes and impacts of this partnership, [a 60,000 acre allocation to a Chinese company was cancelled](#) after evidence that over 70 families' land rights were affected. A court ruled that the local chief who had allocated the land had no authority to do so, and ordered that the company restore the land to the occupiers and compensate them for temporary loss of their land rights. However, this was the outcome of a legal challenge mounted by the international non-governmental organisation (INGO) Namati (see Section 2.4. below) – a member of the VGGT Technical Working Group – rather than by the government and, while not a specific outcome of the national programme, was assisted by the creation of 'land rights defenders' at community level through the partnership agreement. Further support for community-level work has included training of trainers in each district, and support for CSOs to make video documentaries to record and publicise their own experiences with VGGT implementation.

Among the main achievements in Sierra Leone thus far has been a national agreement on the priority areas for reform towards compliance with VGGT principles; strong communication across the key ministries; and improved relationships between government and CSOs. Civil society has two representatives in both the Steering Committee and the VGGT Technical Working Group, and relationships across sectoral groups have been strengthened through joint participation in training processes. The multi-stakeholder platform has been consulted and given input on drafts of a new land policy, a forestry act, a fisheries bill and the draft report of the Constitutional Review Committee, so more participation and inclusion in policy-making is already evident. But it remains to be seen whether improved coordination and transparency ultimately translate into political will to implement the needed reforms and to disclose through CCSI Open Land Contracts the leases the government has entered into with private companies.

Compared with other national-level partnerships, the Sierra Leone case stands out as one where VGGT implementation has the most robust institutional framework: the government hosts the VGGT Secretariat within the Ministry of Lands, Country Planning and the Environment as a ‘one-stop shop’ for all VGGT-related activities, with technical support from FAO. Training for ministerial staff has helped consolidate the role of ‘VGGT champions’ across the various ministries, including directors or permanent secretaries involved in the day-to-day process of implementing the reform agenda, rather than them having to rely only on ministers’ support. FAO is looking to replicate elements of this approach in Liberia.

Among the lessons learnt so far is that, with substantial political support, a resource-intensive programme to implement the VGGT at country level is feasible, but this needs to be institutionalised across different parts of government. After the political support of the government was secured, all ministers involved were replaced during a cabinet reshuffle, but, given the extensive involvement of deputy ministers and senior civil servants in the Steering Committee and Technical Working Group, political buy-in is secured and the inter-ministerial taskforce is continuing its work under the G7 Land Partnership as expected.

‘Improved communication among the three involved ministries and stronger relationships between CSOs and government have been among the substantial achievements so far. More participation and inclusion in policy-making is already evident. But it may be too early to come to a firm conclusion... It will now be important to ensure that improved coordination and transparency translate into political will to implement.’
Christian Schulze, Natural Resources Management Officer, FAO, Sierra Leone.

2.3. Alliances of civil society, social movements and researchers

CSOs and social movements actively participated in the VGGT process from its inception, made substantial contributions to the framing and phrasing of the Guidelines and have embraced the VGGT as a central reference point in mobilisation and activist work around land rights and land justice. CSOs and social movements have invoked and used the VGGT in a variety of ways, popularising the VGGT and embarking on several initiatives to support rural communities to hold state authorities and investors accountable for compliance. Among these is the [Food First Information and Action](#)

[Network \(FIAN\)](#) and its partners among social movements, with action research projects being initiated in partnership with university-based academics in [Africa](#) and [Latin America](#). The Transnational Institute (TNI) has established action research partnerships, and social movements have taken up the VGGT by invoking them in local struggles in conflict and post-conflict situations in [Myanmar](#) and [Colombia](#) (see Sections 6.2 and 6.3 below). DFID has supported a broad coalition of CSOs and social movements, in partnership with FAO, to develop a ‘People’s Manual on the Tenure Guidelines’,³ to promote broad awareness and uptake of the Guidelines by rural activists. Its ‘learning framework’ proposes that, for civil society ‘to understand and use the VGGT within the national context and participate in improvement of governance of tenure’, a series of ‘learning events need to be convened’, and it provides suggested methods and tools that can be used in such events.

Social movements linked to the global peasant movement, [La Via Campesina](#), have also in recent years strengthened their regional networks to popularise the VGGT and to broaden demands for rights not only to land but also to water and seeds and agro-ecological alternatives. One significant example is the [West African](#)

3 The People’s Manual is due to be published in the first half of 2016, initially in English and Spanish. 2 Secretariat, GDWGL.

Personal communication: Romy Sato,

[Caravan for Land, Water and Peasants' Seeds](#), with farmers' and other rural people's movements embarking on a journey from Burkina Faso via Mali to Senegal, building connections with rural communities along the way and mobilising them around their resource rights.

The International Institute for Environment and Development (IIED), a UK-based research organisation with global programmes, has promoted the VGGT through its Legal Tools for Citizen Empowerment programme. The VGGT also frame the land governance part of a handbook IIED has developed: ['Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries'](#). The VGGT also feature prominently in IIED research on how investment treaties could make it more costly for governments to implement the VGGT and address 'land-grabbing' and [how to harness 'pressure points'](#) in agricultural investment chains to implement the VGGT.

There are clearly diverse perspectives within civil society, and differences between non-governmental organisations (NGOs) and social movements, on how to respond to the VGGT. While NGOs often bring a more technical set of skills and perspectives, social movements point out that what ordinary poor people say about their land and other

tenure rights, and the forms of governance they want are far more radical and challenging than what some NGOs are willing to consider. While such dynamics take very different forms in different countries and settings, these tensions are central to the question of whether the potential for effective collaboration and solidarity can be realised. And, while important headway has been made in parts of the world, civil society actors have argued that donor support has been disproportionately directed to initiatives to provide guidance to the private sector or to global or northern-based NGOs, rather than to community organising in developing countries.

'There is just not enough funding for autonomous civil society use of the guidelines. Money for civil society that could help to support movements is shrinking; and it is always framed in terms of "capacity-building" in a mainstream development way, rather than strengthening challenges to authority and helping movements to claim their rights. Not enormous amounts of money are needed; the guidelines are already a good reason and framework to use to mobilise.'
Jennifer Franco, TNI.



Photo: Shutterstock

Box 2. CSO mobilisation: action research and accountability initiatives

Civil society groups have embarked on a wide range of ‘bottom-up’ implementation initiatives through action research. We present a few examples of such initiatives below.

A cluster of partnership-based interventions in Africa, many of them supported by the International Development Research Council (IDRC) of Canada, has shown the merits of action research as a means of implementing the VGGT and strengthening capacity among civil society actors and communities to hold government and the private sector accountable on responsible tenure governance.

- IIED, an international research organisations, collaborates with civil society groups [Innovations Environnement Développement](#) in Senegal, the Land Resource Management Centre in Ghana and the [Centre pour l’Environnement et le Développement](#) in Cameroon. Together, they have been working with communities in these countries to develop social and legal accountability tools to improve accountability in agribusiness investments and implement the VGGT.
- The effects of large-scale land acquisitions on women, and the need to secure women’s independent tenure rights, forms the focus of [work underway in Ghana](#), Cameroon and Uganda. Led by the University of Ghana, civil society partners in these countries have been working with communities to formulate responses and to identify options for more gender-equitable land governance and ways to promote transparency and accountability.
- Inter-Pares, a Canadian-based research organisation, has formed partnerships with civil society groups in Benin, Burkina Faso, Côte d’Ivoire, Guinea, Guinea-Bissau, Mali, Niger, Senegal and Togo. A joint study on large-scale land deals in West Africa found widespread non-compliance with the VGGT. In response, partners established a new alert foncier, or ‘land alertness’, platform, as a civil society hub for the reporting of and responses to land rights infringements. In addition, local land watch committees were established in Côte d’Ivoire.
- FIAN has established an [action research programme](#) in [Mali, Nigeria, South Africa and Uganda](#), working with NGOs and social movements to popularise the VGGT and to use these in interventions to defend and strengthen community rights to land, fisheries and forestry.
- The [Institute for Poverty, Land and Agrarian Studies \(PLAAS\)](#) worked with [NGO partner organisations in Malawi, Mozambique, Namibia, South Africa and Zimbabwe](#) either to conduct action research in communities affected by large-scale land deals and to support resistance or to leverage better deals for them in negotiations with state authorities, traditional leaders and investors. The study, supported by Austrian Development Cooperation (ADC), found widespread ignorance of the VGGT among politicians and investors, documented communities’ views on what would constitute compliance and used these to inform policy advocacy at national and regional levels.

These action research efforts are providing important insights into the local, contextual challenges of implementation, and working with local organisations is providing the basis for wider engagement with the VGGT. However, such initiatives are inevitably small in scale, and not necessarily linked into wider policy discussions at national or regional levels. A number of studies have shown how disconnected these wider debates about the VGGT and land governance more generally are from local realities, with many local players, including state authorities and private companies, not knowing much about the VGGT.

‘There is diversity of interest in supporting implementation of the guidelines. Civil society is one of the most interested parties. The importance of civil society is very much in terms of developing capacity, but they are the watchdogs that will have the moral positioning to use the Voluntary Guidelines, and from that point of view, it doesn’t matter whether they are voluntary or not.’
Paul Munro-Faure, Deputy Director, Partnerships, Advocacy and Capacity Development Division, FAO

2.4. International non-governmental organisations

INGOs involved in global campaigns and implementation initiatives have used the VGGT to frame and strengthen their work.

The [Land Rights Now](#) campaign, launched in 2016, is a global alliance of CSOs united around the goal to ‘secure the collective land rights of Indigenous Peoples and local communities’. Over 350 organisations worldwide, including members and affiliates of the International Land Coalition (ILC), ActionAid, Oxfam and others, are part of Land Rights Now. The aim of the campaign is to build a movement for implementation of the VGGT. The campaign features a set of ‘policy asks’ distilled from the VGGT, with a focus on indigenous and community land rights, which it aims to have achieved by 2020. It describes itself as ‘an unprecedented mobilization of Indigenous Peoples and local communities, governments, intergovernmental organizations, corporate and other private sector actors, civil society, social movements, and citizens from all over the world’ and has a set of ‘[campaign asks](#)’ directed at governments, parliaments, corporations, national and international financial institutions, including banks, pension and private equity funds, and national, regional and international human rights institutions, including the UN Human Rights Council, among others.

Several INGOs also have separate campaigns for land rights and land justice. ActionAid has embarked on its [LandFor campaign](#), with programmes in place in Guatemala, Haiti, Senegal and Zambia. Realisation of the [VGGT principles is a central to the campaign](#), targeting the US and other countries to commit to [zero tolerance’ of land-grabbing](#). Oxfam’s [Behind the Brands](#) campaign has targeted multinational companies in the food and beverages sector to promote VGGT compliance, among other human rights and environmental standards, in their supply chains (see below). This innovative approach establishes scorecards for multinational companies, including on their respect for land rights (see Box 3).

The [ILC](#), a membership-led international network of 207 civil society and intergovernmental organisations committed to land justice, has adopted a National Engagement Strategy to coordinate its members and to establish multi-stakeholder national platforms on land governance, as promoted in Section 26 of the VGGT. The ILC has produced [learning notes](#) to document and share insights from national land governance platforms and multi-stakeholder action plans, using the VGGT as its reference point. In the frame of the operationalisation of the VGGT, the ILC’s model of [People-Centred Land Governance](#) forms the focus of its work with its members and partners. The ILC has made specific contributions to advance the VGGT in the area of land monitoring for informing policy debate at local, national, regional and global levels.

Several northern-based NGOs have focused on building technical expertise and partnering with private sector actors. The [Rights and Resources Initiative \(RRI\)](#) and [Landesa](#), among others, have built relationships with multinational companies and generated toolkits and guidance notes to assist companies to operationalise the VGGT in their business operations and in oversight of their supply chains. Several INGOs working on land governance and land justice issues have developed a coordination strategy to achieve synergies, avoid duplication and share lessons from their work at national level in various countries, for instance within the [LEGEND](#) programme. RRI, Oxfam and Namati are INGOs providing technical expertise and embarking on advocacy work to secure and defend community land rights, especially in the context of proposed large-scale land deals. With the support of bilateral agencies from Canada, France, Germany and the UK, they have a range of initiatives to pioneer new methodologies for delineating community land, defining community membership and clarifying and confirming tenure rights and local governance rules.

[Namati, with partners in Liberia, Mozambique and Uganda](#), has embarked on the first longitudinal study of the impacts of the registration of community land rights. As an alternative to individual titling, community registration of rights presents a model that is arguably more suited to forms of customary tenure, which are based on overlapping entitlements within common property regimes, rather than exclusive rights. Participatory registration initiatives have been found to strengthen accountability in governance; to foreground the voices and participation of women; and to reduce land-related conflicts within communities. Several resource materials have been produced, including a [Community Land Protection Facilitators’ Guide](#) accompanied by [videos](#) available in four languages. These materials provide exercises, sample forms and other resources for ‘land protectors’, who work with communities to protect and defend customary land rights, and cover topics such as mapping and boundary agreement, making community rules for land governance and protecting land in investment negotiations.

Three challenges are evident in all this work. First, while path-breaking, this work is time- and resource-intensive and further consideration is needed of how to build on these experiences in order to scale up innovations of this kind. Second, more work is needed to integrate community registration initiatives with national land governance and administration systems. Third, there are critiques that registration in a context of customary tenure fails to resolve underlying tenure insecurities, and may lead to transacting of rights without the consent of marginalised community members, especially women and other groups.

Box 3. Global campaigns: Oxfam and Behind the Brands

In 2013, Oxfam launched the [Behind the Brands](#) initiative to target 10 of the largest multinational companies in the food and beverages sectors.⁴ Instead of focusing on farmers, Behind the Brands aimed to instigate a ‘race to the top’ among these powerful companies by creating a scorecard to assess them and their supply chains against seven criteria:

1. [transparency](#) at a corporate level
2. [women](#) farm workers and small-scale producers in the supply chain
3. [workers](#) on farms in the supply chain
4. [farmers](#) (small-scale) growing the commodities
5. [land](#), both rights and access to land and sustainable use of it
6. [water](#), both rights and access to water resources and sustainable use of it
7. [climate](#), both relating to reducing greenhouse gas emissions and helping farmers adapt to climate change

Each criterion is assessed on the basis of several indicators. For the land criterion, one of the indicators in the scorecard addresses the VGGT. The companies assess themselves according to these indicators, which requires them to investigate their own supply chains, yet Oxfam is able to conduct detailed local assessments only in selected sites to verify self-reporting. Coca-Cola, for instance, operates in every country in the world, except Cuba and North Korea. It sources sugar from over 3,000 mills in Brazil alone, which in turn source sugarcane from many large- and small-scale producers. Arguably as a result of pressure from Behind the Brands, Coca-Cola has adopted a policy on free, prior and informed consent (FPIC) for all communities affected by its and its suppliers’ operations, and has committed to publishing the details of all its suppliers globally by the end of 2016.

Behind the Brands is widely considered the most successful global campaign to bring about commitments by multinational corporations to human rights standards, and specifically on land governance. At the same time, there have been criticisms levelled against it.⁵ By focusing on the largest and most influential multinationals, the campaign works on the assumption that they are part of the solution. It aims to incentivise them to improve the way they do business, rather than to challenge their domination of the global food system by supporting wider transformation, including small-scale and local alternatives. The orientation is towards better business practice, rather than promoting agrarian reform, redistribution of land and fostering alternatives.

Oxfam’s response to such criticisms is that, because these companies are such big buyers, change achieved through their supply chains can have broader impact than working with governments can. As one respondent observed, when working with large multinationals like these, *‘if they adjust, it affects the whole value chain upstream’*⁶ This is not to say the private sector is more important than governments but, with consumer pressure and concern about land rights and other issues, change can be leveraged via corporate supply chains. Businesses can in turn exert pressure on governments to embark on reforms to require other companies to conform to the same standards.

‘Civil society is moving into a space where we are more confident to engage the private sector as an actor for change.’
Monique van Zijl, Behind the Brands, Oxfam Novib.

4 The 10 companies targeted by Behind the Brands are [Nestle](#), [PepsiCo](#), [Unilever](#), [Mondelez](#), [Coca-Cola](#), [Mars](#), [Danone](#), [Associated British Foods](#), [General Mills](#) and [Kellogg’s](#).

5 Interview, Marc Wegerif, Consultant.

6 Interview, Thea Hilhorst, World Bank.

2.5. Engagement by and with the private sector

Private sector initiatives have focused on self-regulation and partnerships with INGOs and research institutions. The past four years have seen the publication of several guides for private sector companies, not all specific to the VGGT but also responding to growing demands for traceability through value chains and accountability of firms in relation to environmental, economic and social impacts. Several multinational companies and their financiers have made public commitments to ‘zero tolerance’ of ‘land-grabbing’ in their supply chains, and now face the complex question of how to report on their and their suppliers’ practices.

One of the main routes through which uptake by the private sector is promoted is via the PSM, established to coordinate the participation of private companies and investors in the CFS negotiations on the VGGT. The PSM is coordinated by the International Agri-Food Network, which comprises associations – from seed and fertiliser to grain and feed companies – that represent tens of thousands of companies and hundreds of thousands of farmers and cooperatives. Additionally, 500 companies participate directly in the PSM. The PSM promotes the VGGT in three ways: it communicates information about developments at the CFS through its newsletters; it participates in CFS committees; and it proactively promotes the VGGT and the CFS Principles on Responsible Investment in Agriculture and the Food System (the CFS RAI) in international meetings on agricultural finance. The PSM has recently agreed to reactivate its committee dealing with the VGGT and the CFS RAI, as a mechanism to bring together its members to promote these two frameworks.⁷ While promoting uptake of the VGGT among its members, this private sector network emphasises the central roles of governments in producing the legal frameworks that create certainty over land rights and institutions for responsible governance of tenure.

‘Businesses are now faced with the question of how to address the VGGT where there is little uptake by governments.’

Robynne Anderson, Director General of the International Agri-Food Network and Secretariat to the CFS PSM.

Various private sector initiatives have responded to this need for clarity on what is expected of companies and investors. The Interlaken Group (see Box 4) has created fora and resources to assist companies to move towards VGGT compliance, and a guide entitled [Respecting Land and Forest Rights: A Guide for Companies](#). With the aim of assisting companies to comply with international standards and principles, including the VGGT, a US-based INGO, Landesa, has embarked on a four-year process in a

project on Responsible Investments in Property and Land (RIPL) to produce [how-to-guides](#) called ‘playbooks’, which set out the steps stakeholders need to follow. Landesa’s [scoping study undertaken in Malawi, in partnership with the Illovo Group](#), identified gaps in tenure laws and institutions, and will inform its next phase of RIPL in Ghana and Tanzania.

Some region-specific guides for the private sector have also been produced. The G7’s New Alliance on Food Security and Nutrition has produced an [Analytical Framework on Responsible Land-based Agricultural Investments](#) establishing a [standard for ‘due diligence’](#) specifically for investments in African agriculture. In Africa, the Land Policy Initiative (see Section 6.1) participated in developing this framework, which the African Union (AU) has now also endorsed. Drawing on these and the UN Principles for Business and Human Rights, private sector actors have been involved in developing national action plans to incorporate the VGGT into their companies’ practices. Various bar associations have addressed the VGGT in their guidance for clients with land investment interests.

Shareholders and investment firms are holding companies to a higher level of accountability. Some donors are supporting work to establish benchmarks against which companies can be expected to report, such as the [Global Reporting Initiative](#) (GRI), which is developing a land governance indicator with clear metrics that companies can begin to report on. So far, financial institutions have arguably not adequately taken the VGGT on board, but there is some progress in this direction. The Dutch banking group, Rabobank, adopted a [Land Governance Policy](#) in 2015, making it the first international banking institution to commit itself to promoting the VGGT and the FPIC principle in all its operations. In its statement on land governance, Rabobank undertook ‘to promote sound and fair land governance practices, including the guidance of the VGGT’ and to encourage its clients ‘to apply best practices and guidelines regarding good land governance’.

Diverse strategies have been pursued to using the VGGT to change private sector behaviour, from a focus on protecting and defending land tenure rights to ‘de-risking’ investments. A recent review entitled [Land Governance as a Corporate Performance Standard](#) has examined how to drive global policy and practice towards a VGGT-based ‘corporate land standard’. Its findings highlight a need to draw together leading corporates that have made headway in addressing land governance in their value chains, and to use social media to promote awareness of better practices. The review argues that more could be done to develop and make available training for corporate staff involved in finance, risk management and operations, and to invest in

⁷ Interview, Robynne Anderson, President, International Agri-Food Network and PSM.

integrating land governance criteria in training, including for legal practitioners, on business and human rights. A specific step forward could be a single global web-based platform bringing together all information and resource materials for companies wanting guidance on land

governance and responsible investment. Taking these steps should reduce the time and costs to companies of complying with the principles of the VGGT, and promote broader uptake.

Box 4. Private sector corporate responsibility initiatives: the Interlaken Group

The Interlaken Group is a multi-stakeholder network that includes companies and investors involved with land and agricultural investment, as well as INGOs, donor agencies and others. It was formed at the International Conference on Scaling-up Strategies to Secure Community Land and Resource Rights in September 2013 in Interlaken. The purpose of the Interlaken Group is to expand and leverage private sector action to secure community land rights. It is co-chaired by the IFC and RRI.

With the participation of some development agencies and CSOs as well as corporate and investor representatives, the Interlaken Group has produced a guide – [Respecting Land and Forest Rights: A Guide for Companies](#) – to help companies ‘do their part to respect local land and forest tenure rights’ and to align their operations with the VGGT. Financed by DFID through a LEGEND grant to RRI, this Interlaken Group guide provides a systematic set of suggestions on how companies can address land rights issues in both ‘greenfield’ (new) and ‘brownfield’ (existing) sites of commercial investment; how to assess current operations; mergers and acquisitions; and how to audit and ensure supply chain compliance.

Like other guides, including the New Alliance Due Diligence guide, the [Interlaken Group guide](#) emphasises that ‘the VGGT are an indivisible package’. In other words, companies cannot pick certain articles with which to comply and ignore others. At the same time, every project will encounter site-specific land and forest tenure challenges that will require managers to use their judgment and integrate a variety of competencies into project operations.

The guide provides a framework for companies to engage with the VGGT, and has a focus on providing a route for companies and investors to improve due diligence when assessing potential investments, to ‘de-risk’ investments and to navigate land issues during operations. A number of leading investors and companies have already actively promoted the tool in their own organisations and used it to assess the status of land issues in their supply chains. The Interlaken Group actively promotes the tool in international fora and is preparing other tools, including one to provide operational guidance on how companies should deal with land ‘legacy’ issues.

Prompted by Oxfam’s Behind the Brands campaign (see Box 3), several multinational companies have taken on company-wide initiatives to address land rights, among other human rights and environmental issues, through their supply chains. Cargill is one of several that have endorsed the VGGT and made [commitments](#) to strengthening their own corporate governance to address land rights and

land tenure issues. Another company that has taken up land issues is the Illovo Group, a major sugar producer in Southern Africa part-owned by Associated British Foods – one of the companies targeted by Behind the Brands. Illovo has, as a result, developed its own guidelines on land rights (see Box 5).

Box 5. Company guidelines: the Illovo Group’s Guidelines on Land Rights

With land becoming the focus of international campaigns and the public becoming more aware of land rights issues, Illovo – the large South Africa-based sugar company – has moved towards a proactive approach by establishing its own set of [Illovo Group Guidelines on Land Rights](#) as a guide for the implementation of the VGGT in its operations across six countries in Africa. The steps taken included publically declaring its ‘zero tolerance’ stance on land-grabbing and establishing norms within its group to ensure an ethical supply chain, to avoid negative publicity. The VGGT and Oxfam’s Behind the Brands campaign, as well as the New Alliance Analytical Framework, guided the content of Illovo’s guidelines, according to a consultant to Illovo on land issues. The roadmap was launched at the annual World Bank Land and Poverty Conference in March 2015, though implementation is still in its early stages.

Thus far, each company within the Illovo Group has identified a ‘land champion’ who will drive implementation

of the roadmap in its various countries of operation, and is still to develop a training programme for these staff and to put in place a monitoring and evaluation (M&E) system. For Illovo, Malawi is the priority country: land conflicts have been rife around its mills at Dwangwa and Nkhotakhota, not only between Illovo and outgrowers but also among outgrowers, cane growers' trusts and traditional leaders. These have led to [violent and protracted conflict and several court cases](#). At Illovo's request, Landesa has piloted a 'playbook' for its RIPL programme in Malawi and given recommendations to Illovo, and is in the process of expanding this to Ghana and Tanzania.

'Although Illovo has for many years been trying to find mechanisms to resolve land disputes in the countries in which it operates, the "Behind the Brands" campaign gave us the impetus we needed to confront land issues and find partners to work towards lasting solutions to land disputes.'

Kate Mathias, Development Consultant, Illovo Group.

Diverse actors are therefore using the VGGT as a framework to embed strengthened land rights and land governance in global human rights and business frameworks, in national laws and institutions, in company

policies and systems and in community mobilisation to claim rights. Each of these modes of intervention has an implicit theory of change, and political and ideological differences centre on where points of leverage can be achieved.

What then are the main strategies and methods that various institutions have used to implement the VGGT and to make progress towards compliance by states and investors? In the next sections, we discuss five main categories of activity: awareness-raising; capacity-building; national programmes; regional programmes; and M&E.



Massai Men. Photo: <http://wilderutopia.com>

3. Awareness-raising

The potential of the VGGT to leverage improvements in governance of tenure hinges on the degree to which its provisions are known and understood. Much of the focus of their implementation in the first few years has been on raising awareness of their existence and content as a basis for critical discussion and dialogue concerning priority areas for reform, especially at national level.

The VGGT have been translated into numerous languages, with FAO producing the implementation guidelines and commissioning and carrying out quality assurance of translations into the official UN languages. FAO has also produced a brochure and an ‘at a glance’ summary in six languages.⁸ More recently, the Indian NGO Ekta Parishad has translated the VGGT into Hindi, and further translations are underway in several parts of the world. CSOs have used their reach across countries and into rural areas to promote knowledge of the VGGT. FAO, through its country offices, has created partnerships with governments to host awareness-raising workshops in 29 countries (see Map 1). Other forms of awareness-raising include websites and newsletters, e-learning tools, technical guides, journals, television and radio interviews and promotional videos.

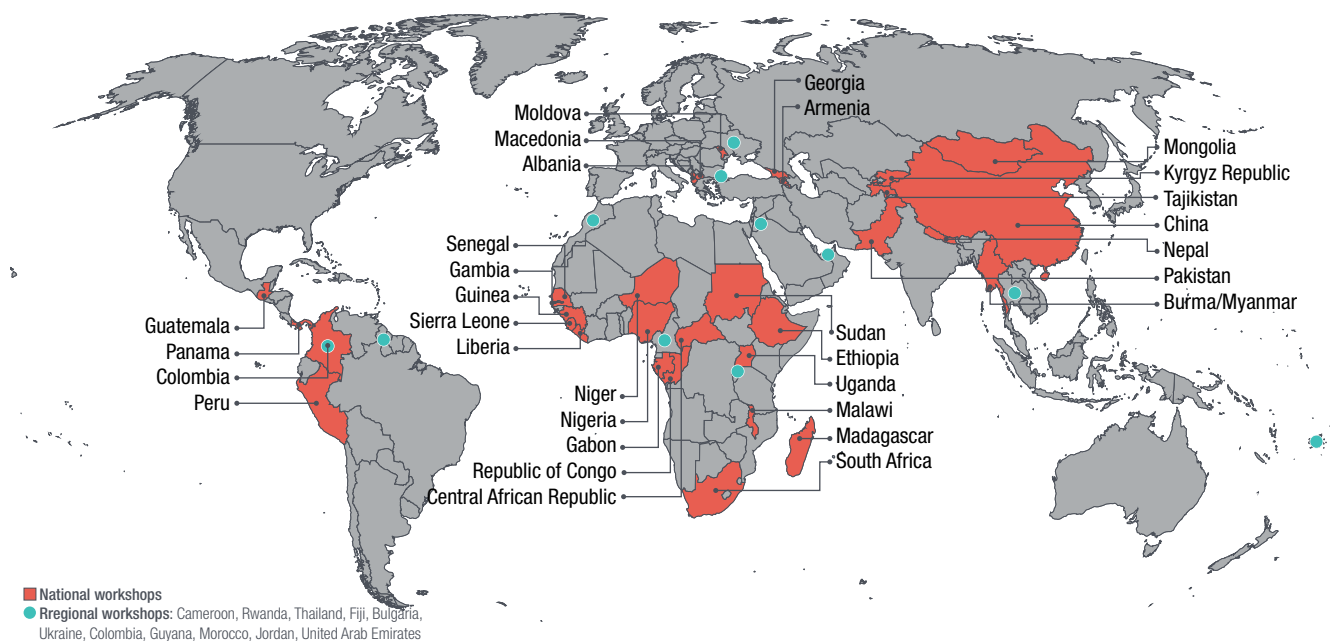
‘We are kidding ourselves if we think we can reach everybody who needs to be reached, overnight... Despite the enormous amount of work, necessarily, at the national level, the most common reaction if you talk to an official, even in a ministry of lands, is “What’s that?” It is difficult to insert it into people’s everyday work. We try to use as many routes as possible to do that. But it will take time.’

Paul Munro-Faure, Deputy Director, Partnerships, Advocacy and Capacity Development Division, FAO

Much more remains to be done for awareness of the VGGT to be broadened globally, but already innovative media have been developed and used. [Infographics](#) and [‘visualisations’](#) have been produced to broaden understanding and awareness. Several CSOs, for instance Zambia Land Alliance, have produced short [documentary films](#) to show the challenges rural communities face with respect to tenure governance in practice.

Many organisations have raised awareness through workshops, the media and public events across the world, targeting a diversity of audiences. FAO is arguably the most significant actor to do so, and has recorded the countries in which it has conducted awareness-raising workshops.

Map 1: FAO awareness-raising workshops



8 These are English, Arabic, Chinese, French, Russian and Spanish.

Not all awareness-raising has focused on developing countries. For example, through the TNI, several projects have aimed to raise awareness of the VGGT and to mainstream land governance considerations in policy frameworks shaping investment, with a focus on European countries. The [Hands off the Land](#) project coincided with the negotiation of the VGGT, and in the immediate post-adoption period used the VGGT to analyse land governance frameworks and land rights in Europe itself. With links to the European Parliament, this initiative succeeded in combining the efforts of activists and scholars

to foreground the role the EU and its member states need to play to strengthen oversight and regulation of the forms of investment European companies and institutions support elsewhere. In a next phase, the [Hands on the Land project](#), with partners in 15 countries, aimed to raise awareness in Europe about the VGGT and make European governments accountable for implementing tenure guidelines in their policies that shape investments elsewhere in developing countries, as well as in their own countries.

4. Capacity development, toolkits and training

Several initiatives have been taken to strengthen capacity to understand the VGGT and to interpret and use them in diverse contexts. Capacity development to use the VGGT is of central importance, including technical support, building platforms and networks for dialogue and providing coordination between implementing agencies, donors and international organisations. Capacity-building initiatives have focused on strengthening the capacity of policy-makers, practitioners, activists and investors to use the VGGT in diverse contexts.

4.1. Toolkits and technical guides

The VGGT are principles and policy guidelines, so other instruments and tools are needed to implement and apply them – such as binding international human rights law and business regulation, national laws and policies, performance standards and indicators, certification schemes, verification and traceability and due diligence. Across all capacity-building initiatives, an emphasis on developing tools and resources has been accompanied by various forms of partnerships – both to develop and to use these resources. INGOs and consulting companies have also invested considerable effort in developing tools and frameworks to implement the VGGT. Growing pressure is being brought to bear, especially on large private companies, to demonstrate their compliance with the VGGT. This has produced a demand for the development of these sorts of tools.

FAO has played a key role in producing capacity development materials and promoting their use and uptake. A series of FAO technical guides⁹ is now well underway. The guides published so far are:

- [Governing Land for Women and Men](#)
- [Improving Governance of Forest Tenure](#)
- [Respecting FPIC](#)
- [Implementing Improved Tenure Governance in Fisheries](#)

- [Safeguarding Land Tenure Rights in the Context of Agricultural Investment](#)
- [Responsible Governance of Tenure and the Law](#)

'Use whatever tools are around that can be used to mobilise from below – and the guidelines can be used in this way. There is a tendency to wait for authorities to implement the guidelines. Anyone can use the guidelines anytime, anywhere.'
Jennifer Franco, TNI.

In addition to these technical guides, a wide range of other toolkits, due diligence guides and frameworks has been developed to shape how actors use the VGGT. Some of the toolkits that have been or are being developed include:

- Agence Française de Développement: [Guide to Due Diligence of Agribusiness Projects that Affect Land and Property Rights](#)
- CDC Group: [Land in Investment: Navigating the Risks and Opportunities of a Challenging Agenda](#)
- CCSI: [Open Land Contracts](#)
- FAO/OECD: [Guidance for Responsible Agricultural Supply Chains](#)
- The Interlaken Group: [Respecting Land and Forest Rights: A Guide for Companies](#)
- IFC: [Performance Standards on Environmental and Social Sustainability](#)
- New Alliance: [Analytical Framework for Land-based Investments in African Agriculture](#)
- TMP Systems: [IAN: Diligence Analysis: Agriculture](#)
- World Bank/UN Conference on Trade and Development (UNCTAD): [The Practice of Responsible Investment in Larger-scale Agricultural Investments](#)

These toolkits and methodologies that have been packaged and promoted aim to assist governments, companies and others to assess risk and to seek compliance with existing laws and the VGGT. While this range of resources has operationalised the VGGT principles for diverse actors and contexts, the spectrum of guides has also been seen as a challenge.

⁹ Further [technical guides](#) are planned on pastoralism, tenure of the commons, enabling technologies for land administration, the private sector, public resources, aquaculture and mariculture and land registration.

'People are finding it extremely confusing – the proliferation of guides to the guidelines and the differences among them – and that is not helping at all. We want governments to establish frameworks that the private sector can operate in. For those companies that have implemented the guidelines, there have been challenges with the broadness of the wording of the VGGT. The VGGT and RAI are written in a negotiated format, with the private sector not being the primary audience; the private sector is unclear what standard it is to be held to... It is very difficult when a company goes to implement it.'— Robynne Anderson, Director General of the International Agri-Food Network and Secretariat to the CFS PSM.

'The guidelines were designed to be like a menu rather than a how-to guide. The idea was for policy-makers from around the world look at this and find appropriate provisions that could guide policy and institutional decision-making. Because it was negotiated in a political forum and as a "menu of policy choices", it lacked some technical specificity that would allow easy application, and as a result we have seen a proliferation of "how to" implementation guides that take it to the next step.' Gregory Myers, World Bank (US Chair of VGGT negotiations at the CFS).

Several of these tools focus on responsible agricultural investment, which is a point of overlap between the VGGT and the CFS RAI (see Box 6), endorsed at the CFS in 2014. Several technology-based tools have been developed to assist states and communities themselves to record

Box 6. Responsible investment in agriculture and the food system

The [Principles for Responsible Investment in Agriculture and the Food System](#) (CFS RAI) of 2014 focus more broadly than the VGGT on forms of investment and their impacts. Where agricultural investments involve land acquisition, the VGGT apply; the CFS RAI differ from the VGGT in that they address tenure issues in relation to water resources and water management also. They also represent a more recent framework. Two years after the CFS RAI were endorsed, not much progress has been made to popularise and operationalise the principles. Further, there are divisions among civil society groups as to whether they entrench powerful interests in agriculture and the food system or offer real leverage to the poor and food-insecure. Some elements are being addressed in initiatives to implement the VGGT – those that deal with responsible land-based investment – but this is not the totality of the CFS RAI. The challenge remains to implement the CFS RAI principles in their totality, and not only the elements they share with the VGGT.

tenure rights. FAO has developed and launched open source tenure-related software. [Solutions for Open Land Administration \(SOLA\)](#) is a low-cost set of applications for governments to use in land administration, and [Open Tenure](#) is a new set of tools that communities can themselves use to record their tenure rights, updating records over time at minimal cost. Also contributing to these efforts to enable people to document their property rights is [Cadasta](#), which offers an accessible online platform and open source tools for recording ownership, occupancy and spatial data. Its resources can be used to guide the collection of such data, and its software applications can be used in the field for capturing these. Finding ways to popularise such tools and support their use is an ongoing challenge for those aiming to strengthen capacity to record tenure rights.

4.2. Training

FAO has embarked on a 'blended learning' model that combines e-learning and webinars with face-to-face training events. Such initiatives are designed to promote the use and uptake of available tools. 'Governing land for women and men' is one such e-learning initiative that complements the technical guides; this involves an online interactive workshop; a four-day face-to-face workshop; and an online mentoring phase for a month thereafter. Among the wide array of e-learning tools and established webinars and training events have been:

- [training civil society and grassroots organisations at country level to use the VGGT](#)
- an e-learning course: introduction to the VGGT
- a gender and land tenure e-learning module
- other e-learning courses addressing spatial planning, corruption, disputes and conflicts and tenure issues in the context of natural disasters

Linked to all these capacity-building resources is a series of country-based learning programmes that include training of trainers, with the aim of dispersing knowledge about the VGGT to broader audiences within the country, and also training of journalists to strengthen media coverage of land and other resource tenure and governance issues. Promoting public awareness of the VGGT can strengthen media coverage of land governance issues. In the Gambia, for instance, [a training programme](#) jointly convened by the Ministry of Agriculture and the National Coordinating Organisation for Farmers Association of The Gambia saw a group of 20 journalists being trained on the VGGT. The purpose was to strengthen use of the VGGT and critical assessments of governance reforms in the country.

'Inclusive learning processes which are based on dialogue and exchange between political, practical and scientific knowledge spheres are key for the successful implementation and monitoring of the VGGT.'

Beckh et al. (2015: 328)



Photo: <https://planetbuidingblues.com>

5. Country-level support: bilateral and multilateral partnerships

The VGGT indicate the forms country-level initiatives can and should take: ‘States are encouraged to set up multi-stakeholder platforms and frameworks at local, national and regional levels or use such existing platforms and frameworks to collaborate on the implementation of these Guidelines... This process should be inclusive, participatory, gender sensitive, implementable, cost effective and sustainable’ (Article 26.2).

In line with the VGGT implementation principles, a wide variety of country-level programmes have been established, with a combination of bilateral and multilateral partners. The GDWGL has summarised its programmes, including those that relate to the VGGT, in tables and an interactive map. The GDWGL provides one lens on the work underway at country level to implement the VGGT and to address land issues more broadly, and the database on which this is based is constantly being updated. By and large, this shows that bilateral donor funding follows national priorities, some shaped by colonial and other historical ties and investor interest. Country programmes, whether those of donors or via FAO, are not blueprints; rather, there are diverse entry points that are defined in negotiation with governments. In Uganda, for instance, FAO convened a series of workshops that identified support for the issuing of Certificates of Customary Occupation as a priority need. In general, rather than catalysing policy reforms, the VGGT implementation process centres on strengthening capacity and systems for implementation of existing law and policy.

Donor and World Bank funding for country programmes is contingent on partnerships with governments – and hence political will.¹⁰ The greatest appetite for VGGT implementation, among both state and non-state actors, appears to be in Africa, in part perhaps because of the prominence of customary tenure and the incomplete nature of reforms to secure tenure and democratise its governance, and possibly underscored

by the adoption of AU policy frameworks. Both implicit and explicit priorities therefore emerge and are evident in which countries are supported, resulting in inevitably patchy coverage of countries, at least in this early phase of VGGT implementation.

Coordination at country level, though, remains a challenge: ‘The Guidelines will provide a unique opportunity to promote practical integrated work between relevant sectors, in particular at the national level where implementing agencies and institutions will be encouraged to co-ordinate and collaborate on issues of responsible governance of tenure’ (Ariel et al., 2012: 70).

A wide diversity of donor-funded programmes at country level have seen investments in land administration, legal recognition of tenure rights and duties, transfers of tenure rights and large-scale land acquisitions, responses to climate change and emergencies and, more generally, promotion and implementation of the VGGT and their M&E. In some instances, national platforms have been established through partnerships between FAO and national ministries and focal points. All of these programmes aim to drive country-level implementation through national policy review and reform processes.

Among the main country programmes are the [G7 land partnerships](#). In 2013, the G7 countries established land partnerships with the declared purpose of accelerating implementation of the VGGT in Africa. The eight [pilot country partnerships](#) are Burkina Faso (US), Ethiopia (UK, US, Germany), Niger (EU), Nigeria (UK), Senegal (France), Sierra Leone (Germany), South Sudan (EU) and Tanzania (UK). The G7 will publish the first official progress reports in June 2016.

A contribution towards country programmes has been the development of some legal assessment tools. FAO has developed a general Land Assessment Tool (LAT) as a framework for comparing existing legal frameworks against the VGGT principles. Also drawing on the VGGT,

¹⁰ Interviews, Thea Hilhorst, World Bank, and Iris Krebber, DFID.

FAO has also launched a [LAT for gender-equitable land tenure](#) and used this as a framework to assess compliance in national laws with the VGGT principles on gender equality in access and governance of tenure. This has been completed in 18 countries and thus far has highlighted areas where changes are needed to provide a basis for women and men to have equitable tenure, across a broad spectrum of laws affecting tenure. Such comprehensive reviews at country level form a basis for discussions about reforms and have in some cases been used as part of country-level partnerships to address the VGGT.

The World Bank also has several country programmes to address land issues, at the request of governments, including two standalone programmes on land rights in Africa, in Tanzania and Uganda, but more commonly addresses land issues in wider programmes with partner states. Its particular involvement at country level has been through partnerships to apply its LGAF.

Taking stock of progress at country level can help identify common challenges across diverse contexts. A [UN-Habitat review](#) of land tenure security in 15 selected countries, conducted with the support of the German Agency for International Cooperation (GIZ), has pointed to the dramatic contrast between tenure rights enshrined in law and actual practices. While each country's unique tenure system and challenges require tailored responses, the report calls for substantial investments in land management and administration, as well as more focused work to address groups in society whose tenure rights are most weak.

Box 7. Using the World Bank's assessment framework in VGGT implementation

Many governments have taken the initiative to conduct assessments of their land governance frameworks, through partnerships with the World Bank. The past year has seen new initiatives towards use of the [World Bank's LGAF](#) to assess progress towards [VGGT compliance](#). LGAF is a set of 27 land indicators developed and tested by the World Bank and partners and used by governments to benchmark their governance of land. It has now been implemented in 33 countries, with another 11 currently using it.

However, the use of LGAF as a basis on which to benchmark states or assess progress towards realisation of the VGGT is controversial. Critics object to the methods and political interests underpinning its use for [three main reasons](#): mistrust of the World Bank; the difference in content between the LGAF and the VGGT; and the process by means of which LGAF assessments are conducted.

In particular, though LGAF covers most of the VGGT content, there are substantive differences. Missing from LGAF are the VGGT guidelines on restitution, redistributive reforms, transboundary matters and natural disasters. It also does not address fisheries, a central pillar of the VGGT. Further, it does not include the VGGT principle requiring affordable and prompt enforcement of outcomes (General Principle 4) or a [holistic and sustainable approach](#) (Implementation Principle 5).

One response to these critiques is that LGAF and the VGGT serve different functions: LGAF is a tool to assess the current state of land governance, as a basis for policy discussions; the VGGT represent a vision towards which states and other actors should aspire.¹¹ While the two frameworks remain different, and controversies remain about using LGAF to assess progress towards VGGT compliance, the priority now is to avoid duplication or parallel initiatives, for example distinct stakeholder platforms, and to ensure inclusion throughout as well as coordination. The World Bank is undergoing a process of adapting LGAF to VGGT principles and guidance, and assimilating their provisions.

11 Interview, Thea Hilhorst, World Bank; Hilhorst and Tonchovska (2014).

6. Regional partnerships

Between the global and the national level, regional intergovernmental bodies are intermediaries through which the VGGT can be promoted. However, whether initiatives at the regional level are an effective means of exerting downward pressure on states to address the VGGT remains a point of contention. Involving regional institutions can be a route to promoting understanding of the VGGT and to establishing platforms for sharing experiences and lessons from implementation among member states – but not to implementation *per se*. Parallel civil society initiatives at a regional level can add to these, by mobilising communities to invoke the VGGT in defence of their tenure and to demand better land governance and administration, and more equitable and just redistribution and restitution. Civil society can also provide evidence to inform regional discussions about the issues to be addressed.

But regional initiatives have their limits. The land question is profoundly national and defining land policy is a national competency. Countries do not generally accept regional frameworks to deal with land issues. As a result, regional initiatives can support national and subnational processes by creating hubs for learning and capacity-building, and spaces for lesson-sharing, but have generally had to tread a clear path that supports without intruding on national affairs.

Initiatives in Africa, Latin America and South-East Asia illustrate some of the ways in which regional partnerships can be configured to facilitate support to and monitoring of national governments, solidarity among CSOs mobilising in support of the VGGT and lesson-learning among states.

6.1. Africa

Regional partnerships have been prioritised in Africa. This meso-level entry point, via the Regional Economic Commissions (RECs), is expected to influence national governments to undertake reforms in line with the VGGT, and to strengthen the capacity of the RECs to provide oversight of policy and governance reforms among their member states. What follows is a summary of some of the regional initiatives and partnerships that have been developed by governments, CSOs and others.

The AU Framework and Guidelines on Land Policy in Africa

The Framework and Guidelines on Land Policy in Africa (F&G), endorsed by African heads of state in 2009, along with the AU Declaration on Land Issues and Challenges in Africa, predate the VGGT. Yet these African frameworks hold much in common with the VGGT, specifically their emphasis on inclusiveness, participation and a multi-sector approach to land governance. Together, they identify a range of issues to be addressed in national land policies and a methodology for improving land governance. Driving the process of strengthening land governance in Africa is the Land Policy Initiative (LPI), jointly established by the AU, the African Development Bank (AfDB) and the UN Economic Commission for Africa (UNECA).

While the F&G and the VGGT are different in their genesis and underwent different validation processes, ‘there is no doubt that they can reinforce each other’, according to LPI Chief Joan Kagwanja. The F&G did not undergo as inclusive a negotiation process as the VGGT did at the CFS. Yet they contain clear mandates to African states to address the legacies of colonial rule and confront the ‘scramble for Africa’. In this sense, they provide political direction at a continental level: they acknowledge historical injustice arising from colonial rule, threats to land rights brought about by the ‘land rush’ and patriarchy in land relations. Their call to action to member states is not limited to governance of the existing distribution of land rights but also focuses on substantive questions of land justice. While the VGGT and the F&G are distinct in their scope and status, they have substantial areas of common ground, which the ILC has summarised in a useful [comparative table](#).

Implementing the VGGT and the F&G in Africa

The AU, through the LPI and together with FAO and donor agencies, has made specific efforts to converge efforts to promote the VGGT and the F&G in Africa. Several institutions note the risk of parallel initiatives and that, even though African states have endorsed the VGGT, some pay more attention to the F&G as they perceive it to be more legitimate as an ‘African’ framework.

Since June 2014, FAO and LPI have collaborated to integrate implementation of the VGGT and the F&G in Africa. Supported by the EU, a joint Land Governance Programme in Africa operates at two levels: the pan-African level, seeking to mainstream the VGGT at continental level; and the ‘transversal’ level, where country partnerships have been established. At the pan-African level, both frameworks are to be promoted at high-level intergovernmental meetings, through a unified

communications strategy, and in the New Partnership for Africa's Development (NEPAD) and the Comprehensive Africa Agricultural Development Programme (CAADP). The LPI is in the process of establishing an M&E system on land governance and compliance with these two frameworks in Africa, and further discussion is planned to coordinate evaluation at the African regional level and at the global level via the CFS (see also Section 8 below).

Country programmes

The country programmes are at different stages and each has a distinct focus according to contexts and priorities. At the transversal level, 10 countries have been identified

as priorities for [joint implementation of the VGGT and the F&G](#) with support from the EU: Angola, Burundi, Côte d'Ivoire, Ethiopia, Kenya, Malawi, Niger, Somalia, South Sudan and Swaziland (see Map 2). These are to be the focus of capacity development on land governance; knowledge-sharing and exchanges among the countries; and support in the design of M&E systems. Lessons learnt from these country partnerships are to be fed into pan-African initiatives. A next phase of the transversal programme will extend to five new countries, focusing not only on land: Cameroon (forests), Ghana (fisheries), Guinea Bissau, Sudan and Uganda (Larbi, 2016).

Map 2: Country programmes in Africa



Regional support to in Zambia's land policy process

A recent example of regional support by the LPI to country processes is in Zambia, where the National Land Policy is under review. The LPI has played an intermediary role in promoting an inclusive multi-stakeholder group, and provided grants both to the government and to the Zambia Land Alliance as a lead civil society institution. The government grant includes resources for universities to support and guide the policy review process and contribute evidence from research, and for multi-stakeholder consultations, as required by both the F&G and the VGGT. Technical expertise has come in the form of two consultants to support the government and civil society partners in the policy discussions. In these ways, the support of donor institutions linked to global and regional governance frameworks has opened platforms for dialogue at the national level, and the building of closer relations among key stakeholders, which was not present previously. Among the challenges observed in this process is turnover of political leadership and in the civil service, which impedes the building of knowledge and relationships.¹²

The Guiding Principles on Large-scale Land-Based Investment

Following the VGGT, ongoing discussions among African institutions on how to respond to the 'land rush' or 'land-grabbing' led to the development and adoption of the Guiding Principles on Large-scale Land-based Investment (AU GPs). These principles operationalise the responsibilities of states contained in the VGGT as well as drawing from the F&G, to provide more specific indications to African governments as to how and under what circumstances large-scale land deals should be allowed. Here, the VGGT were a key reference point. Drafters drew directly from the wording of the VGGT in developing the six fundamental principles and their elaboration into operational principles to give effect to the provisions of the VGGT concerning land-based investment. The AU GPs emphasise and provide direction to states particularly on gender equity in the context of land-based investment.

The Network of Excellence on Land Governance in Africa

Following years of discussions on how to strengthen capacity to drive land governance reforms in Africa, in 2015 the AU announced the establishment of **NELGA**, launched in April 2016. This network of tertiary institutions will conduct training and research, provide technical assistance and build M&E systems on the continent. Initial steps taken thus far include an assessment of curricula and mapping of institutions providing undergraduate and postgraduate training in disciplines

relevant to land governance. Guidelines on strengthening curricula are in production.

This network is envisaged to support the emergence of a new generation of land professionals in Africa, building capacity in the state, private sector and civil society, via several 'nodes' at universities around the continent that will both conduct research and develop short course training for policy-makers, practitioners, local authorities and civil society actors to disseminate knowledge and share 'best practices' on land governance. Scholarships will support the development of a new cohort of land experts at African universities. A priority and a challenge will be to broker collaboration among tertiary institutions to mainstream training in land rights and land governance across diverse disciplines. Also planned are a collaborative research programme on land governance, fellowships to allow for exchanges across regions and a repository for data, indicators and information on land policy and governance. The vision is to build over time 'communities of practice' at centres of excellence across the continent, to host a biennial conference on land policy in Africa and to establish an academic journal on the same.

Towards an African Centre for Land Policy

The next major development in strengthening capacity at regional level is the conversion of the LPI into the **African Centre for Land Policy**. In contrast with the existing small secretariat of the LPI, this is envisaged to become a more substantial institution that will 'provide leadership, coordination, build partnerships and promote policy advocacy in support of member states'.

6.2. Latin America

In Latin America, the VGGT have begun to influence national and regional policy thinking, and civil society groups have used them to strengthen advocacy and capacity-building. The broad framework of the VGGT, rooted in international human rights frameworks, chimes in many ways with the new or revised national constitutions agreed across the region in the past few decades. Constitutional provisions allow for an embedding of normative international human rights agreements in national law, as a guide to state actions (Monsalve Suarez, 2014), supported by the Inter-American Commission on Human Rights. This wider historical, legal-political context therefore offers a receptive setting for the development of the VGGT across the region.

Developments in Brazil

Brazil has taken a lead in encouraging debate on the VGGT, including at a regional level. Nationally,

¹² Interview, Joan Kagwanja, LPI.

Brazil has committed to the VGGT, and its National Security Council on Food and Nutrition is putting the Guidelines at the centre in its national proposals on food security. Equally, the Ministry of Agrarian Development and the land reform agency, the [National Institute for Colonisation and Agrarian Reform](#), have stated that the VGGT are important for the development of the National Plan for Sustainable and Solidarity Rural Development (Brent et al., 2016). The Guidelines match the narrative on family farming that is central to one strand of policy discussion around agrarian reform in Brazil, focusing on linking social and environmental development and a territorial approach that respects autonomous development and the rights of indigenous peoples. The Ministry of Agrarian Development sees the VGGT as guiding the Inter-ministerial Working Group for the Improvement of Land Governance, created in 2013, which brings together various federal bodies (Brent et al., 2016).

FAO support for regional initiatives

At a regional level, too, Brazil has taken a number of initiatives. The Common Market of the South (Mercosur), while focused on trade and regional integration, is also engaging in wider social policy questions regionally (Brent et al., 2016). Brazil has also been promoting debates on ‘family farming’, building on its own policy discourses. During 2015, FAO and Brazil’s Ministry of Agrarian Reform collaborated to hold a regional workshop to promote uptake of the VGGT. The Mercosur Special Meeting on Family Farming, held in Brasilia in June 2015, involved the governments of Argentina, Bolivia, Brazil, Chile, Ecuador, Paraguay, Uruguay and Venezuela. The meeting noted, ‘in addition to strengthening national implementation processes of the VGGT, new positions at the regional level must be constructed at the same time, especially within the Community of Latin American and Caribbean States... and Union of South American Nations, ... both of which should pledge to emphasize the VGGTs in their work. They [states] agreed that the Guidelines should be used to guide the multilateral and bilateral cooperation between states and between states and civil society’ (quoted by Brent et al., 2016).

FAO is heavily involved in these regional processes in Latin America, given its close connections with the Ministry of Agrarian Development and the Brazilian government, in particular via the current Director General, José Graziano da Silva. The close link between the ministry and FAO, and the joint commitment to progressive land governance and implementation of the VGGT, is reinforced in a recent publication on family farming by the International Policy Centre for Inclusive Growth of the UN Development Programme (UNDP IPC-IG), focusing on family farming (Patriota-Cooper and Pieri, 2015). However, the degree to which regional processes are prompting other countries in the region to take up the VGGT is less clear.

Progress in Bolivia and Colombia

Yet the VGGT have gained purchase elsewhere in the region, including in Bolivia and Colombia. With their existing policy framework centred on human rights, the VGGT provide a useful point of reference, playing a strategic role prior to the development of new laws or advocacy campaigns. In the view of the CSO Fundación Tierra, the VGGT can be used to challenge existing policy in Bolivia, including the role of investors and agribusiness (Vadillo et al., 2014, quoted by Brent et al., 2016). In Colombia, the Universidad del Externado in Bogotá has started to provide information to the public about the VGGT. Meanwhile, in the context of land restitution discussions following the end of the conflict with the Revolutionary Armed Forces of Colombia (FARC), there are opportunities for using the VGGT in combination with existing legal frameworks (McKay et al., 2016).

Mobilisation and other civil society strategies

In Latin America, many of the national efforts by CSOs to build capacity for advocacy have not resulted in much change on the ground. The VGGT have provided a useful discursive tool in regional diplomacy and in the manoeuvring of particular ministries in national policy debates. But the most tangible activities have been workshops and meetings, and implementation has been limited in terms of concrete changes in law and policy. However, given the vibrant civil society in Latin America, and the role of organised social movements in policy processes, there has been substantial mobilisation around the VGGT outside of state-led national and regional processes. Civil society groups have adopted a radical interpretation of the VGGT and see them as an important way of translating human rights norms into national policy and holding states and agribusinesses to account. Central to their advocacy is a direct challenge to ‘land-grabbing’ and support for alternatives, including ‘family farming’ and ‘food sovereignty’.

Social movements, mobilisation and advocacy

In this work, the role of La Vía Campesina, along with other groups across the region, is vital. Many such groups participate in the regional body of the IPC: the Alianza por la Soberanía Alimentaria de América Latina y el Caribe (ASA). Many individuals from these groups were involved in the original negotiations of the VGGT, and so are well aware of the political tensions inherent in them. ASA has led a ‘people’s initiative’ to monitor implementation of the VGGT in Colombia, Peru, Panama and Paraguay, initiating capacity-building workshops with the support of FAO and the Brazilian government. La Vía Campesina also leads a capacity-building effort with grassroots CSOs, with initiatives in Argentina as well as in Central America, particularly in Nicaragua (Brent et al., 2016). A ‘People’s Manual’ on the VGGTs has been developed by the Movimiento Nacional Campesino Indígena of Argentina.

This compiles case studies of implementation from around the world, and is available in French, English and Spanish. The focus is building local-level advocacy by marginalised groups, who can get to understand the VGGT and deploy them in their struggles (Ortega-Espés et al., 2015, quoted by Brent et al., 2016).

6.3. South-east Asia

In Asia, and especially South-east Asia, several multilateral and civil society initiatives have taken up the VGGT at regional and national levels. FAO has established a partnership with states in the Mekong Delta – Cambodia, Laos, Myanmar and Vietnam. A next stage will see a country partnership established with Pakistan. FAO has also established country-based partnerships in India, where it has worked with the Asia Indigenous Peoples Pact, with support from the Swiss Agency for Development Cooperation (SDC), to strengthen the capacity of indigenous activists and leaders to use the VGGT to pursue recognition and defence of their communities' rights. In Nepal, FAO's partnership with the government has drawn together diverse groups to use VGGT principles in the context of disaster management following the major earthquake in 2015. And in several former Soviet republics – Armenia, Kyrgyzstan and Tajikistan – the focus has been on strengthening land administration. Several of these, however, are capacity-building processes at national level that are not sustained in the form of partnerships with national governments or regional institutions to implement required reforms.

Also in the Mekong region, the [Mekong Region Land Governance \(MRLG\)](#) programme, supported by SDC and GIZ, and implemented by the [Land Portal](#), aims to promote the VGGT principles related to transparency of land-related information. Using Linked Open Data, the MRLG is partnering with various groups across the region to create an open, online land data platform that can be used to secure smallholders' tenure rights.

Several region-wide consultations and meetings have drawn together government officials and civil society groups, including a Regional Multi-Stakeholder Consultation on Land Governance in the Asia-Pacific Region, held in Bangkok in 2015 and convened by FAO. This event, with representatives from 11 countries, focused on strengthening customary tenure and promoting responsible agricultural investment, drawing on the VGGT and the CFS RAI. Another regional initiative, driven through a partnership between engaged scholars and local activist groups, was an international academic conference on Land-grabbing, Conflict and Agrarian-environmental Transformations: Perspectives from East and Southeast

Asia, held in Chiang Mai, also in 2015. Here, in addition to the array of challenges associated with state- and private sector-driven enclosure of community land, several contributions and panels addressed how the VGGT could be applied and used in the region.

Also in the region, and building on these alliances of scholars and activists, is a civil society partnership addressing land rights and land policy, and invoking the VGGT as a framework to contest large-scale land deals and to understand the relationship between climate change, land concentration and conflict. This group, [MOSAIC](#)¹³ has been engaging with land policy processes using the VGGT, and working with local civil society groups to strengthen rural people's engagement with these, in Cambodia, Myanmar, the Philippines, Vietnam and Indonesia.

Myanmar's new land policy

In Myanmar, from 2010, growing tensions over land and the opening-up to investments after sanctions prompted the government to start a new land policy process as a basis for a new land law. A civil society partnership, involving the TNI and local partners, has been established to use the VGGT to frame responses to a draft national land policy. These CSOs have been working with diverse groups, including ethnic civil society and even armed groups, which have their own ideas and want to put land issues on the table in the peace process and craft alternative proposals. All have used the VGGT for input on global land policy debates on land from a human rights perspective, and as international standards they can refer to.

Two INGOs, [Namati](#) and [Landesa](#), have also been working in Myanmar. [Namati](#), working with the [Civil and Political Rights Campaign Group](#), has deployed community-based paralegals to work with rural communities to secure their tenure, tracking specific cases and identifying issues to be addressed in the policy and law reform process. [Landesa](#) has conducted field-based research focusing on rural women. Together, they have consolidated their experiences and used the VGGT as a reference point to make recommendations and give input into the Myanmar land policy process in a [joint report](#).

Use of the VGGT to shift the policy discourse

Use of the VGGT to strengthen development of the national land policy illustrates some real headway. In response to a draft published by the government in October, a series of interventions by the TNI and its partners, among others, extended the consultation process from two to 18 months, and resulted in the adoption in January 2016 of a very different policy from that initially proposed.

13 MOSAIC is the name of this partnership, and is not an acronym.

'You can literally read the impact of bringing the TGs [Tenure Guidelines] into the discussion in the subsequent revised version of the [Myanmar land] policy. The strategy of using the Tenure Guidelines [VGGT] as part of a political strategy of engagement helped to alter the process of consultation, and also the outcome... In public consultations, people went prepared and were able to bring criticisms and proposals into the official public consultation. This put onto the table over 900 comments that... had to be dealt with.'

Jennifer Franco, TNI.

Entrenching human rights in land policy

Substantial headway was achieved in entrenching the VGGT principles in Myanmar's land policy. Whereas

the original draft was fixated on how to bring in foreign investment for economic development, now it is grounded in a human rights perspective, along with environmental and social justice considerations. Customary tenure systems are recognised, as is shifting cultivation, and areas under such tenure cannot be defined as 'vacant' land. Restitution issues and the rights of internally displaced people to return are established as a policy principle. The new national land use policy similarly now reflects VGGT principles. Through this process, the Karen National Union, one of the key parties in the peace negotiations, used the VGGT to revise its existing land policy, drawing it in line with both the spirit and the letter of the VGGT.¹⁴



Photo: <https://i.guim.co.uk>

14 Interview, Jennifer Franco, TNI.

7. Assessing implementation

What constitutes effective implementation of the VGGT?

The variety of actors and interests that helped shape the Guidelines have diverse views on what it means to implement, and what is needed in terms of monitoring and reporting. The VGGT as a set of guidelines can be interpreted either narrowly or expansively, and politically progressive readings and uses of them can add weight to movements not only to defend but also to expand and strengthen poor people's access to land and tenure. Success stories are needed, to provide pointers as to effective methods of implementation in different contexts, and documenting innovative practices and their impacts will be key as implementation proceeds.

There have been many initiatives to realise the VGGT in practice, but underlying much of this activity is a wider debate about the meaning and the politics of implementation. Inevitably, different actors see the VGGT in different ways. Some regard them as presenting an opportunity to improve existing state policy or business practice; others have a more transformative agenda, seeing opportunities not only to protect existing rights but also to promote new rights through redistributive measures or to restore rights through restitution mechanisms (Franco et al., 2015).

'Improving governance' can be understood in many different ways, and politics and positioning matter. As the

VGGT evolve, who is speaking for whom and framing the debate? Clearly, FAO is central, and is supported by various international donors and aid agencies, but most FAO initiatives have focused on information provision and support in building capacity. At regional level, very different processes have unfolded in Africa, Asia and Latin America, reflecting different political contexts. CSOs and social movements were central to the crafting of the VGGT (McKeon, 2013, 2014), but their capacity to engage for implementation remains limited. In the meantime, large, well-funded INGOs have become involved, often with different alliances and foci, and linked to substantial efforts to provide 'tools' and 'frameworks' for implementation.

To what degree do these various efforts emphasise strengthening regulation and administration of land rights, or fundamental transformation, support for vulnerable marginalised groups and seeking democratic control of land? Or to what degree are efforts invested in improving conditions at the margins, providing legitimacy for existing practices and policies and avoiding more fundamental changes? And what balance between these competing interests in interpreting the VGGT can gain legitimacy? These alternatives are at the heart of debates about implementation and central to discussions on both the 'governance fix' and the 'business turn' (see Box 8).

Box 8. Critiques of the ‘governance fix’ and the ‘business turn’

CSOs have criticised efforts – by states, development agencies and even some NGOs – with regard to ‘helping the corporate sector to implement the Tenure Guidelines’ so as to secure land and other resources in order to expand their farming and agribusiness operations. In 2015, in a joint statement entitled ‘[The Guidelines on the Responsible Governance of Tenure at a Crossroads](#)’, published by La Vía Campesina, 42 social movements, grassroots organisations and NGOs calls on states, UN agencies, research institutions and NGOs ‘to withdraw and refrain from all initiatives that aim at abetting the corporate sector and private investors to use the Tenure Guidelines [VGGT] for the pursuit of business interests, thus supporting the corporate capture of resources, public policy spaces and human rights’.

This critique of the ‘business turn’ in the implementation of the VGGT claims, first, that ‘natural resources are transformed from a human rights issue into a matter of business’. The range of technical guides, land journals, e-learning modules and other materials FAO has produced has been widely valued. Yet the rapid growth of guides for investors produced by a spectrum of institutions, social movements argue, ‘start from the wrong premise: they are built around the risks that private and corporate investors encounter in acquiring land, fisheries and forests... in order to manage and reduce economic, financial and reputational risks’ rather than the human rights principles which underpin the VGGT. Second, these guides implicitly transfer state prerogatives and duties to companies and investors.’

These groups argue that the ‘multi-stakeholderism’ of implementation initiatives mixes up the roles of states and companies, entrusting businesses to ‘resolve land conflicts’ instead of states, as duty-bearers, to realise and protect tenure rights and to regulate and monitor investors.

Third, the guides impose ‘a non-existent “partnership” between corporations and communities’ and presume their different interests can be resolved by integrating local people into corporate supply chains – through contract farming, outgrower schemes and management contracts.

However, rejoinders to these critiques have pointed out that civil society groups and social movements lobbied for provisions in the VGGT that place obligations on investors. The attempts by private sector companies to make land-based investments respond to these can be seen as an achievement, and a signal that the VGGT are having the effect they were intended to have: to change behaviour. Underlying the critique, though, is the perception that donor support is being directed towards such initiatives at the cost of funding that could strengthen civil society, social movement and grassroots organisations.

‘We do not accept the corporate capture of our natural wealth, resources, human rights and public policies, and will oppose all attempts to establish money- and market-driven governance of natural resources, food and nutrition.’

La Vía Campesina.

The critique of a ‘business turn’ reflects a frustration with slow progress in changing laws and state practices, which civil society groups see as responding primarily to pressure from citizens. In global debates and in our interviews, we found that, among some actors from the private sector and civil society, there is a common perception that thus far not enough progress has been made in promoting uptake by states. The degree to which this is true could be determined by an analysis of the range of donor-funded programmes globally, as reflected in the GDWGL database – though such an undertaking was beyond the scope of this study. What is the extent of country programmes with governments compared with other partnerships, and is this appropriate? Do such programmes focus more on improving governance of existing land relations – on land administration and customary tenure – than on substantive issues of strengthening social justice and equality in land

access, such as land redistribution and restitution? Or is the spread of support across different elements of the VGGT appropriate?

Broader questions emerge from this concern. How can more pressure be exerted on states from above (in the global arena and multilateral fora) and from below (from citizens and civil society)? And what is the scope in some contexts for civil society and the private sector to work together to achieve a positive influence on government and donor policy and practice?

Further, while the attention to responsible agricultural investment focuses on large-scale land acquisitions and multinational companies, there is mounting evidence that dispossession and growing inequality in access to land in developing countries is being driven by small- to medium-scale acquisitions by domestic investors and urban elites. In some countries, notably in Africa, these cumulatively surpass the impact of large-scale deals involving big foreign companies (Jayne et al., 2015). This underlines the need for strategic responses beyond regulation of large-scale deals and the importance of law reform and its implementation at country level.

8. Monitoring and evaluation

Generic M&E challenges emerge for the VGGT: by what indicators should we measure progress, what data need to be collected, how, who does so and who reports to whom? Further, there are questions about the feasibility of gathering relevant information, the reporting format and what is done with reports.

'The question of monitoring and review also needs more attention and progress has to be made. It will be crucial to identify what exactly needs to be monitored, how and by whom. Many participants emphasized the responsibility of FAO and the UN Committee on World Food Security (CFS) to ensure an inclusive monitoring and review process. It was also suggested that social movements should embark on evaluation and develop a strategic plan for monitoring while linking it back to the CFS. Overall, it will be important to exchange perspectives and to clarify and manage expectations on the roles and responsibilities of FAO, the CFS and all other stakeholder groups.'

Beckh et al. (2015): 327

But monitoring is enormously complicated by the absence of any lead agency with the responsibility and authority to carry it out. The decentralised nature of VGGT implementation means there is no central system of M&E. The CFS has established an Open Ended Working Group on monitoring, and created a template for voluntary reporting by governments, but by a deadline of April 2016 only about 30 countries had submitted reports on their progress towards implementation of the VGGT.¹⁵ And, while the template is fairly broad, there is a trade-off between soliciting voluntary reports and aiming for detailed and robust reports: the template could be made more detailed and robust but this may dissuade countries from reporting at all, since they are not compelled to do so. To the extent member states are willing to agree, the CFS could make more robust efforts to deliver on its mandate to monitor states' progress.

A critical juncture for entrenching the VGGT will be the CFS session in October 2016, which is set to discuss mechanisms for monitoring. By 2017, a CFS-led approach

to monitoring should be clarified. Yet the CFS is a political body and subject to the interests and priorities of its members, including governments, some of which may prefer not to make reporting requirements too stringent. Whatever happens at the CFS and its future role in monitoring, imaginative alternatives will be needed to institutionalise monitoring at other levels to complement CFS monitoring. A few spaces to improve monitoring can be identified.

First, the GDWGL compiles updates on its members' programmes, but does not conduct monitoring *per se*. This is the most cohesive way information can be compiled and analysed. Extending existing coordination among donors to include a monitoring element could be one step towards achieving more systematic assessment of implementation over time. For example, revising and strengthening the website, its map and database, and linking these to other data sources, would improve transparency and constitute a form of monitoring to complement the CFS monitoring system that is still evolving.

Second, new opportunities have already been opened up through the post-2015 development process to use the VGGT as a framework to craft solutions in the SDGs. The inclusion of a 'land indicator' for SDG 1 on ending poverty is a major achievement as it opens the way to track land governance globally. Many involved in campaigning to improve land governance argue this is an important way land rights have been 'mainstreamed' into global development agendas – and an achievement made possible because of the VGGT as well as the concerted efforts of many to use the VGGT in negotiations over the targets and indicators. Having a land indicator entrenched in the SDGs means monitoring of the SDGs within a multilateral framework will contribute towards monitoring of tenure security as an outcome of application of the VGGT. Global efforts to gather data to report on SDGs 1 and 5 could lead to better reporting on the VGGT. In this sense, the SDGs both reflect the VGGT as a 'global public good' and provide one route through which they can be promoted and monitored (see Box 9).

¹⁵ Personal communication, Andrew Hilton, FAO, April 2016.

Box 9. The VGGT and the SDGs

Under SDG 1, ‘to end poverty in all its forms everywhere’, an agreed target (1.4) states that, ‘By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.’

The land indicator proposed for SDG 1 on ending poverty is the percentage of people with secure tenure rights to land (out of total adult population), with legally recognised documentation and who perceive their rights to land as secure, by sex and by type of tenure.

The indicator aims to capture:

- the complexity of tenure rights to land, not simply land ownership, as this would leave out arrangements such as customary rights to land
- both men and women with or without secure tenure rights to land, as this comparison is essential to assess progress towards the target
- a measure by both legally recognised documentation and perception of secure tenure rights, as a person may legally be the landowner but may not perceive their rights as secure (and vice versa).

Further, an indicator for gender equality in land access and tenure has been included under SDG 5, ‘Achieve gender equality and empower all women and girls.’

Even in the absence of globally coordinated M&E, several initiatives have emerged that have begun to outline possible approaches. In December 2015, the [Institute for Advanced Sustainability Studies](#) and FAO jointly hosted a multi-stakeholder workshop in Rome to evaluate progress with implementation. Entitled ‘Quo Vadis VGGT?’, this brought together a diverse array of actors to debate steps taken thus far and identify next steps. A key agreed priority was the pivotal role of monitoring and learning from the VGGT and the need to establish joint systems to assess implementation within the framework of the SDGs. ‘Learning partnerships’ at national level could form the focus of future M&E systems, bringing diverse stakeholders together to embark on status quo assessments of land governance, using existing frameworks such as LGAF and the Analytical Framework for Land-based Investments in African Agriculture; assessments of land governance reforms towards compliance with the VGGT; and engagement with donor agencies on their support to national needs in land governance reforms. National institutions with statutory responsibility for monitoring human rights standards could also play a key role in these partnerships. Such initiatives could complement monitoring by the CFS and among donors.

The [Donor Platform Working Group on Land](#) advocated for both of these land indicators to be incorporated permanently in the SDG agenda. Their creation was the work of the [Global Land Indicators Initiative](#) (GLII), a broad coalition of development agencies, civil society groups and others convened via [UN-Habitat’s Global Land Tool Network](#) (GLTN), established in 2012 to develop a cohesive set of global land indicators for the post-2015 development agenda. The Inter-agency and Expert Group on SDG Indicators responded by including the land indicators proposed by the GLII, its associated civil society coalition and the GDWGL after debate and analysis of available and feasible data sources during 2014 and 2015. While this now formally agreed, the status of the indicator – and whether states will be obliged to report against it – is still to be determined. This critical determination hinges on the [availability of metadata](#).

9. Key debates about VGGT implementation

As this report shows, enormous strides have been made in taking forward the principles of the VGGT and embedding human rights in land governance. This is a positive story. At the same time, there are challenges – and diverse views – about how these initiatives can gain traction to bring about

real change. We identify nine key debates about the VGGT and their implementation, which reflect the critical views of many actors who are deeply committed to the VGGT and their realisation in practice but who continue to grapple with the question of how this can be achieved.

Table 1: Key debates about VGGT implementation

Key debates	Perspectives and challenges
1. Soft law, hard law and human rights frameworks?	The VGGT are by definition voluntary rather than binding, so through what processes can they bring about change? How can the VGGT become reflected in human rights law and embedded in constitutional and wider legal frameworks in different settings? What would it take for the Guidelines to gain traction in practice, to shape stronger international law and regulations and binding 'hard' law at national level, so they can become an effective tool for the claiming of rights by local communities? What does it take for soft law to become entrenched in enforceable legal frameworks and accessible to ordinary people, and particularly poor and vulnerable groups?
2. Rebranding and repackaging?	Diverse initiatives to address tenure rights and systems of land governance now benchmark themselves against the Guidelines – including many initiatives that predate the VGGT, such as donor support to strengthen land administration. In what ways are these 'implementing' the VGGT? Have existing initiatives simply been rebranded as VGGT implementation? And does that matter? The VGGT confirm existing law and practice into an agreed minimum standard, so implementation should not necessarily be expected to be separate from prior work on land. Rather, use of the VGGT as a reference point consolidates the global normative consensus on governance of tenure. This is arguably the added value of the VGGT: that they entrenched existing 'best practice' into a politically authoritative document.
3. The 'governance fix' – maintaining the status quo?	Critics in CSOs and social movements, such as signatories of the International Statement published by La Vía Campesina in December 2015, argue many of the implementation initiatives focus on governing the status quo, through protection of existing rights and improved land administration, rather than agrarian change and transforming land relations towards greater equity. This is despite the provisions on redistribution and restitution in Paragraphs 14–15, which have been somewhat neglected in practice, arguably because of wider political realities outside the CFS and the drive by both governments and investors to facilitate investment. Is the focus on improving governance of existing landholding systems and land relations at the cost of transformative visions of agrarian reform? The preference for the term 'Tenure Guidelines' instead of the VGGT among CSOs and social movements both reflects the rejection of the 'governance fix' and aims to emphasise the authoritative character of the Guidelines rather than their 'voluntary' character.
4. The 'business turn' – supporting commercial investment?	Substantial funds and expertise have been dedicated to creating resource guides and tools for private sector companies and working with multinationals to mainstream VGGT compliance in their business models and processes. The concept of a 'business turn' in the use of the VGGT has emerged in international discussions to draw attention to the current emphasis on the elements of the VGGT that concern responsible business and the management of private land-based investments. This conveys the idea that the Guidelines, initially directed primarily at national governments, have in the period of implementation thus far been pushed towards regulating and shaping private companies' behaviour – possibly to the detriment of sufficient attention to the responsibilities of governments and building state capacity to improve governance, recognition and protection of tenure rights. Is sufficient attention being given to working with states? Or is changing private sector behaviour by creating incentives as well as 'naming and shaming' a primary way to realise the principles of the VGGT? Is there an appropriate balance between attention to governments and to the private sector?
5. Burdening the private sector?	Some private sector players argue they want to comply with the VGGT but the complexity of the requirements, and the multiple other frameworks with which they need to comply, makes this costly and time-consuming. Are all these frameworks realistic about what companies can do to secure land rights while also being financially sustainable? Are companies choosing not to invest where this involves land acquisition because of these complex requirements – and, if so, is this a lost development opportunity? Do these growing expectations of private companies deflect attention from governments as primarily responsible for governing land rights, and expect companies to substitute in their own policies for failings and gaps in national laws and policies?

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6. Centralised coordination or multiple initiatives?	How can implementation initiatives be coordinated? The VGGT are a global agreement forged at the CFS, an international and intergovernmental body that reviews status and trends in food security and nutrition globally. Supported by FAO, the CFS develops policy recommendations and guidance for implementation. Because of the nature of the CFS and its relationship with FAO, there is no formally mandated lead institution responsible for implementation. FAO plays a crucial role, but emphasises that it is not the lead institution, and the VGGT are not the ‘FAO Guidelines’ but a global public good. While the GDWGL tries to coordinate among funding agencies, overall the VGGT implementation process has inevitably been fragmented and patchy. Is there a need for stronger coordination, or does the absence of centralised coordination not matter?
7. Scaling up – how to build on islands of success?	Innovative approaches to securing customary and informal land rights, including community land protection and registration initiatives, can yield tangible results for poor and vulnerable populations. Many of these are very localised interventions and are yet to be scaled up. How can pockets of success become the basis for policy and institutional reforms to improve land governance and administration? How can these be links to wider processes of VGGT implementation?
8. Grounding implementation in different contexts?	Partnerships forged at the global level do not necessarily cascade effectively down to the regional, national and local levels. In many instances, states are not driving implementation of the VGGT and regional and national political contexts suggest very different dynamics of implementation in Africa, Asia and Latin America. In some contexts, there are adversarial relationships between governments and CSOs; elsewhere there is more coherence and consensus, and at the global level there is collaboration between INGOs and the private sector. How can VGGT implementation become more embedded in regional and national contexts, and how can lessons be learnt across and within regions?
9. Monitoring – of what, how, by whom and for whom?	In the absence of a formally mandated lead institution, there is no central system of monitoring, or indicators for compliance with the VGGT. How can such a thing be established, what will it take to encourage more states to submit reports voluntarily and what can be done with these reports? M&E is to be the focus of the next CFS session in October 2016. The question of what criteria are to be assessed is bound to be the subject of political debate, but developing monitoring frameworks does provide an opportunity to move beyond ‘governance’ or ‘business’ fixes, and link to wider human rights frameworks. Alongside the efforts of the CFS to coordinate some global monitoring, what other complementary ways of systematising information – from governments, private sector companies, civil society and others – can be created? How can a CFS-led monitoring system build on emerging hubs where information is being collected, analysed and shared – rather than supplanting these – and how can others, including civil society and the private sector, contribute to monitoring?



Photo: <http://www.yesmagazine.org>

10. Lessons: what is working and what is not

Globally, significant progress has been made on implementing the VGGT. Enormous efforts by diverse actors have laid the groundwork for scaling up initiatives. For a non-binding instrument this widespread support is a key ingredient, but by itself it is not enough. Specific steps taken to enable implementation have been the production of high-quality learning materials – technical guides and e-learning courses – and the convening of training events targeting a broad spectrum of audiences, including policy-makers, practitioners, civil society activists, journalists and others. Less evident thus far is the development of monitoring mechanisms to assess the impact of these initiatives on understanding and uptake of the VGGT. Benchmarking national laws and policies on land, fisheries and forestry against the VGGT is an important next step.

Implementing the VGGT is not a linear process, nor is there any single lead institution. Instead, it is a decentralised process involving diverse institutions with different interests. The past four years have seen new kinds of partnerships among actors that have not previously worked together – for instance civil society and campaigning organisations working closely with private sector actors to strengthen their oversight and governance of their global supply chains.

A critical juncture: It may be that the VGGT are arguably at a critical juncture. Four years on, enormous commitment and activity is evident, yet progress in some areas has been slow. Continued political commitment – from governments, donors and others – hinges on evidence that the Guidelines are being translated from global ‘soft law’ into ‘hard law’ at country level. Examples are needed of national governments that have locked key principles of the VGGT into policy and legislation. The impetus towards this inevitably means a degree of ‘picking winners’ and dedicating support to those countries where governments show deep commitment. Yet this also means some countries in which intractable and conflictual land issues exist are not being adequately prioritised. New and innovative strategies are needed to engage in such places, where political economy considerations make work with governments difficult or impossible.

Success stories: Documented examples are needed of countries that have transformed their laws, policies and

institutions in tune with the VGGT; companies that have changed their policies and practices and ensured tenure rights are protected and respected throughout their supply chains; and communities that have found ways to define and defend their tenure, expand their control over natural resources and developed their own governance systems. These examples are needed to incentivise and inspire others to follow suit, to share lessons and best practices and to protect the VGGT from being stuck at the level of ‘soft law’.

However, there have been tensions and challenges, as the debates introduced earlier highlight. We have also seen some of these in the cases discussed above. Unresolved issues include the following.

The role of the state: Ultimately, states are responsible for land administration and governance and providing the statutory framework for normative international guidelines. As part of the intergovernmental process on the formulation of the Guidelines, states are signatories, and are obliged to pursue them. However, states have to date mostly been rather absent from implementation processes. In some cases, states have engaged as part of donor-funded programmes (as in Sierra Leone) or made use of the VGGT to push implementation of existing programmes (as in Colombia). However, non-state players, including CSOs, NGOs and the private sector, have led most implementation initiatives. Many have argued that there is no need ‘to wait for the state’, and that it is important to move ahead, and develop the capacities to hold states to account, but ultimately states must play a role, and engaging state actors and processes is an important challenge for the future.

Regional processes: As discussed earlier for Africa and Latin America, regional processes have represented an important route for sharing lessons and building capacity. However, unless there are clear incentives for collaboration, such processes can easily get bogged down in regional politics. A strong lead is essential. This may emerge through a number of routes. In Africa, the LPI plays an important role; in Latin America, particular governments, notably Bolivia and Brazil, appear to be acting as champions for new land governance practice. This allows others to learn from progressive

implementation experiences, and enables sharing to occur. The regional political context is important too. In Latin America, a recent history of strong human rights frameworks at the centre of policy-making in certain countries provides a basis for concerted action. In Africa this is less evident, as the LPI suffers the consequences of the weakness of some of the African regional organisations, and there is often heavy reliance on external donors. Sharing experiences across regional civil society networks and action research programmes can help build insights and capacity, but currently coordination and linkages are weak, and efforts are still disparate and fragmented.

Governance tools and frameworks: There has been a proliferation of ‘tools’ and ‘frameworks’ to assist various sectors to operationalise and use the VGGT. These all have their merits, but, as technocratic solutions to often-complex political and social challenges, they have their limits too. Such technocratic interventions of course carry with them assumptions as to what the problem is and how it is to be solved. Much emphasis is placed on mapping and cadastral survey technologies, often with the assumption that land governance challenges should be resolved through improved land registration and titling systems. This is of course open to dispute. Equally, there is much emphasis on legal tools to comply with good governance ideals of transparency and accountability. The VGGT emphasise ‘free, prior and informed consent’ for indigenous peoples, for example, but how this is to be implemented, and by whom, as part of what ‘community-based’ and ‘participatory’ process, is always subject to local political circumstances. The use of such tools may be part of a public relations exercise without significant change; in other cases, they can provide the starting point for major procedural and practical change, but usually only when concerted effort and pressure are applied.

Capacity: Capacity-strengthening is central to many of the programmes being initiated, but often the basic question of ‘capacity for whom, to do what?’ is not asked. There are now many guides, playbooks, manuals and implementation tools, as well as huge amounts of information, in many languages. But it is often not clear who will use this and how. The disconnect between local ground realities and the wider policy discussion is the result of limited capacity of ordinary people to challenge states and investors on their responsibilities. Some of the major capacity gaps exist on process issues around monitoring, assuring accountability and providing support for legal challenges. There appear to be very few ‘legal empowerment’ capacity efforts with local groups, CSOs and movements linked to the VGGT. If ‘soft law’ is to be made real, then pressure on states, companies and others must be exerted, and capacity to do this is currently weak.

Community empowerment: Among the plethora of implementation initiatives, a major gap has been community empowerment in the midst of proposed investments: to support poor and marginalised communities to use the VGGT as a basis to engage with investors, to negotiate and leverage benefits or to resist land-based investments. Without this, the concept of FPIC, which the VGGT confirm in relation to indigenous peoples, cannot be realised. This requires building capacity and bargaining power, on the basis of the VGGT, and being cognisant of the typical divisions and inequalities within ‘communities’ – which so often marginalise women and young people. While some social movements and CSOs are doing this work, they need more support. The innovative work of legal NGOs like Namati can assist organisations that work at the grassroots and work with those directly affected by proposed land-based deals. Stronger mobilisation and use of the VGGT by communities can in turn feed into pressure for policy and legal reforms at national level, creating upward pressure on states to comply with the VGGT. While many implementation initiatives have involved multilateral partnerships (with global institutions) and bilateral partnerships (with governments), there remains much more to be done to support direct civil society action to mobilise communities around their rights.

Donor coordination: Coordination among donors has been strengthened in response to the VGGT. The GDWGL is a mechanism for exchange of information among donors about what they are doing, where and how, and enables them to avoid duplication and identify gaps in implementation processes – rather than operating in silos. However, this coordination is realistic only at the global level; a real challenge remains in terms of coordination at the national level. A key achievement of the GDWGL, together with civil society groups and others, was its successful lobbying for incorporation of a land indicator, based on the VGGT, in the SDGs (see Box 9). Future directions could include more collaborative funding, rather than each agency working separately with its partners in different parts of the world, though this would need to still allow for diversity in their emphases and priorities.

Engaging with corporates: A striking feature of VGGT initiatives to date has been the focus on the private sector. Guidelines for private sector investors can create the kind of compulsion and support that could leverage change in investor behaviour towards VGGT compliance. Campaigns can also highlight good and bad practices, encouraging new behaviours through ‘naming and shaming’. There are also important synergies between initiatives. Behind the Brands focuses on what companies must do, whereas the Interlaken Group has brought companies together with think-tanks and NGOs and development agencies to clarify

how they can do it. Separately, these initiatives would be relatively weak; together they can be effective – forcing compliance through exposure, combined with guidance on what companies need to do to comply. Yet nothing would happen without consumer and public pressure: the wider involvement of publics in such issues internationally is vital. That said, the targets of such efforts are of course a very small slice of potential investors, many of whom are much smaller, local players; if they are international, sometimes they are from countries where corporate social responsibility pressures are less keenly felt compared with in Europe and North America. Seeking new approaches for engaging other categories of business actors, including smaller and domestic companies, and holding them to account will require new approaches and strategies.

Financial institutions, safeguards and conditionality:

Financial institutions have also been responsive to the VGGT. Leading the way is the new Asian Infrastructure Investment Bank's safeguards framework, which incorporates VGGT key principles, for instance on resettlement: that resettlement can be used only in pursuit of a clearly defined public interest under national law; it can be used only as a last resort; and physical resettlement and economic compensation must aspire to leave people better off or at minimum restore their livelihoods. This sets a new benchmark for financial institutions' compliance with the VGGT. As with companies, financial institutions' responses to the VGGT could prompt a 'race to the top' as these institutions revise their safeguard policies and benchmark themselves against the VGGT and against one another.

Integration in multi-stakeholder processes: The VGGT emerged from a successful multi-stakeholder process, and implementation continues with this integrative spirit. The VGGT are cross-cutting, meaning they apply to diverse areas of policy and practice. This is a strength of the VGGT and yet poses challenges for uptake, as a broad spectrum of policy-makers and practitioners needs to be targeted. Initiatives by international financial institutions towards mainstreaming the VGGT in their lending criteria are to be commended, as are engagements between civil society and private sector actors. But of course, as with the VGGT negotiations themselves, such multi-stakeholder processes inevitably involve contests over values, framings and politics, and are charged with power relations. Making sure there is openness to such processes, including the building of trust and common standpoints, is important to generate genuine joint work. The lessons of the CFS process and the origins of the VGGT are important, and should not be lost.

Law in practice: Central to the debate about VGGT implementation is the need to translate international 'soft law' into reality on the ground. This is a major task, and will not happen smoothly and without contention and

negotiation. This is a political process of interpreting and realising a set of guidelines that are necessarily vague and unspecific. The struggles that resulted in the VGGT in 2012 continue, but what is essential is that these are not closed down, and must be inclusive, participatory and democratic, reflecting the origins and principles of the VGGT. Several useful tools offer legal guidance, including the technical guide for legal practitioners produced through a partnership between FAO and IIED and other guidance notes on law-making and the legal frameworks for contracts produced by CCSI and the International Institute for Sustainable Development.

Political economy: Political economy factors are among the variables that may drive more meaningful and widespread uptake of the VGGT – or inhibit their use and impact. The degree to which there is convergence between business and political interests in gaining access to and control over land is a key variable shaping and constraining uptake of the VGGT. As is to be expected, therefore, implementation of the VGGT has been patchy and skewed in various ways, geographically and thematically. A lot of work has been done to develop capacity and promote transparency and advocacy, but there has been little robust work in countries where, for reasons of political economy and vested interests, governments are not willing to implement land reform robustly. In general, there appears to have been more work on implementing the guidelines in Africa, in part because of an expressed demand by governments but also because of donor priorities; this is followed by a few countries in Asia and somewhat less in Latin America.

Building pressure on states: An important gap in implementation initiatives has been the limited upward pressure on states from poor rural populations and their civil society allies. Much donor funding has gone to global multilateral partnerships with global institutions, bilateral partnerships with states and developing tools; remarkably little support has gone to direct civil society action to mobilise communities around their rights. In the midst of proposed investments, civil society input and support for grassroots organisations could strengthen the bargaining power of poor people and their capacity to negotiate. Realising the VGGT principles means people must have the power to engage, negotiate and leverage benefits. Land protection work is crucial to this and can strengthen people's ability to resist investments. Interventions such as these could also build mobilisation towards national policy reforms and strengthen the downward accountability of states to their citizens.

What, then, are the prospects for the Guidelines gaining traction? As a global consensus that is not codified in law, the VGGT can be considered equivalent to customary law – an 'international customary law'. This normative framework, linked to various international human rights provisions, can be very powerful. Yet to making tenure rights real requires much work, and must combine both

top-down work on compliance procedures and translation into national statutory law and bottom-up efforts around transparency and accountability and building the capacity of people to hold states and companies to account.

The VGGT have already become the authoritative reference point for further development of international standards regarding land tenure. The inclusion of a land indicator in the SDGs is testament to this. From a civil society perspective, the procedural provisions of the VGGT can help open doors and bring government and private sector actors to the table in dialogue. This offers

many opportunities, but these can be closed down if the more progressive interpretations of the VGGT are ignored, subverted or side-lined. Insisting on the provisions regarding 'vulnerable and marginalised' people is vital. Equally, a focus on processes of democratising land control is essential, including with reference to provisions of promoting land redistribution and restoring rights through restitution, not just ameliorating the way the status quo is governed.



Photo: <http://cdn.ipsnews.net>

11. Recommendations

Drawing on the experiences and lessons above, we propose several ways in which the VGGT can be used as an international framework and normative consensus to drive paradigm change and transform land tenure security and land governance. Recommendations here focus at two levels: new directions for taking forward VGGT implementation and specific recommendations directed to different stakeholders.

11.1. What needs to be done?

Already much has been achieved and lessons have been learnt. In implementing the VGGT, actors have different strategies and theories of change.

FAO and donor partnerships to date have aimed to promote the VGGT among states and the private sector – as the primary sectors with responsibilities for land governance. These initiatives have found fertile ground where there are already interests and incentives for this, particularly among states in the midst of political change and large multinational companies concerned about reputational risk. The challenge remains to embed the VGGT in contexts where states are resistant and where private sector companies do not feel compulsion to reform their practices. In such contexts, the VGGT are unlikely to find purchase in the absence of pressure ‘from below’. While there are already several initiatives of this kind in Africa, Asia and Latin America, these are relatively few and scattered and have not reached a critical mass. Such initiatives need further investment if they are to be effective in influencing wider processes of change.

We offer here some proposals for new approaches and strategies that could and should be more vigorously pursued.

- It is necessary to broaden and increase participation in the international benchmarking of country-level laws, policies and practices against the VGGT.
- If the VGGT are to have effect in national policies, especially in countries where political economy dynamics mean governments do not take the initiative, then there needs to be massive expansion of community mobilisation to take up the VGGT.
- Cross-sectoral initiatives and partnerships have already produced results, and more innovation in this area is needed to broaden their reach and strengthen impact.

- Also needed is the promotion and careful use of technologies for recording land rights, through participatory processes and involving ethnographic research expertise, and consideration of how to use these experiences to record rights at scale, and the necessary legal, policy and institutional frameworks this would require.
- There is potential to build further on the synergies between regional and global frameworks to benchmark countries’ progress towards realising the VGGT principles, using the SDG land indicators and the legal assessment tools that have been created.
- Building capacity also requires institutionalising land governance in universities and other institutions of higher learning, in research as well as in academic and professional training.

All these can be seen as complementary, and as building on progress made so far. But who should do what? We make some recommendations for different sectors below.

11.2. What can global donor agencies do?

- Work to get land issues mainstreamed and entrenched in all their governments’ development aid partnerships, so this is recognised as a cross-cutting issue and is adequately prioritised and adequately funded.
- Continue to coordinate donor initiatives through the GDWGL and promote more transparent sharing of information regarding these interventions and their outcomes and lessons.
- Support a single global web-based platform bringing together all information and resource materials for governments, companies and civil society groups that want guidance on land governance and responsible investment.

- Support the uptake of existing resources and tools that have already been developed and promote their use by governments, civil society and private sector actors.
- Analyse the database and discuss the appropriate balance of country programmes with governments versus other partnerships, their regional spread and reach and the balance of land governance and administration versus transformation of land relations via redistribution and restitution.
- Identify neglected issues in the VGGT for greater prioritisation in donor programmes, through an analysis of the existing spectrum of initiatives and which sections of the VGGT these seek to advance.
- Invest in more land protection work for indigenous peoples' and community rights, including direct funding for practice-oriented learning and community exchanges.
- Support multi-stakeholder platforms at national level and lesson-learning across these, with a focus on achieving impact on government law and policies.
- Support longitudinal studies to track the impacts and outcomes of tenure interventions at community level, including forms of community land rights registration.
- Identify neglected issues in the VGGT for greater prioritisation in donor programmes, through an analysis of the existing spectrum of initiatives and which sections of the VGGT these seek to advance.
- Invest in more land protection work for indigenous peoples' and community rights, including direct funding for practice-oriented learning and community exchanges.
- Support multi-stakeholder platforms at national level and lesson-learning across these, with a focus on achieving impact on government law and policies.
- Support longitudinal studies to track the impacts and outcomes of tenure interventions at community level, including forms of community land rights registration.
- Support the production and promotion of accessible materials in local languages to popularise elements of the VGGT.
- Work with FAO to conduct legal assessments of tenure laws and land governance institutions, including assessments of gender equality, as a basis for identifying needed reforms.
- Work in regional intergovernmental fora to establish systems to track states' progress towards the human rights standards of the VGGT.
- Improve the quality of data collection and data transparency on land and related tenures, as a basis for M&E.
- Voluntarily report to the CFS on targets for strengthening tenure governance and progress towards compliance in law, policy and practice.

11.4. What can civil society and social movements do?

11.3. What can national governments do?

- Continue to use the VGGT in mobilising rural communities around issues of land justice, land rights and land governance.
- Continue to develop innovative and multi-media learning materials to popularise the principles and provisions of the VGGT, especially among marginalised and vulnerable communities and people.
- Develop partnerships with governments, research institutions and the donor community to disseminate these at scale.
- Expand the reach and impact of action research aimed at enabling especially poor and vulnerable communities to defend their tenure and to exert upward pressure on states to provide legal recognition and institutional reforms.
- Collaborate to achieve impact at regional level, in order to strengthen mobilisation of rights holders and to pressurise states to enact necessary reforms.
- Document efforts to strengthen bottom-up accountability and use these to advocate for policy and legal reforms.
- Build global networks to link local struggles for land, land rights and responsible land governance.
- Work with CSOs and other partners to establish multi-stakeholder platforms, as outlined in Section 26 of the VGGT.

- Participate in multi-stakeholder platforms at national level.
- Produce shadow reports on national government targets and progress towards compliance with the human rights standards of the VGGT.

11.5. What can international non-governmental organisations do?

- Continue with global campaigns such as Land Rights Now and LandFor and expand their reach.
- Continue with global campaigns to benchmark the behaviour of multinational corporations, such as Behind the Brands.
- Systematise rankings of countries and companies against the VGGT principles, and track progress towards targets.
- Build stronger relationships with activist organisations at grassroots level and support them to defend tenure rights and strengthen land justice and land governance.
- Document local struggles to secure tenure rights and responsible governance using the VGGT and disseminate lessons emerging.

11.6 What can the private sector do?

- Publicly state commitment to the VGGT and establish corporate mechanisms to ensure new investments and existing company operations are in line with the principles.

- Establish partnerships and use available tools and learning materials to make available training for corporate staff involved in finance, risk management and operations.
- Use available guidelines to improve own and suppliers' respect for marginalised and vulnerable communities' tenure rights.
- Establish targets for auditing supply chains and be open to partnerships for investigating and supporting improved land governance within these.
- Adopt transparent methods to demonstrate progress towards compliance within their supply chains.
- Challenge other companies to compete with them in a 'race to the top' to define best practice in private sector operations.

11.7. What can multilateral and financial institutions do?

- The CFS should make more robust efforts to deliver on their mandate to monitor states' progress and to promote reporting for strengthened M&E.
- Financial institutions should incorporate the VGGT in their safeguards policies to ensure these are preconditions for lending.

Interviews

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- Chloe Christman, Oxfam USA, USA
- Jennifer Franco, TNI, Netherlands
- Thea Hilhorst, World Bank, USA
- Joan Kagwanja, AU/UNECA/AfDB LPI, Ethiopia
- Iris Krebber, DFID, UK
- Kate Mathias, Illovo Group, UK
- Annalisa Mauro, ILC, Italy
- Luca Miggiano, Oxfam, Germany
- Sofia Monsalve-Suarez, FIAN, Germany
- Paul Munro-Faure, FAO, Italy
- Gregory Myers, World Bank, USA (formerly US Chair of VGGT negotiations at CFS)
- Hubert Ouedraogo, AU/UNECA/AfDB LPI, Ethiopia
- Christian Schulze, FAO, Sierra Leone
- Monique van Zijl, Oxfam-Novib, Netherlands
- Marc Wegerif, Consultant (formerly Oxfam, Tanzania)
- Andy White, RRI, USA

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Section 2.

LEGEND Initiatives

to Strengthen Land

Governance

Giles Henley

1. Introduction

Part 2 of this report offers an overview of the work supported under LEGEND during the past year and highlights how the guidance, initiatives and analysis produced support the implementation of the VGGT.

LEGEND is DFID's principal programme working on land and responsible land-related investment. It pursues actions globally to achieve improved land governance at the international, national and local levels that supports inclusive and sustainable economic growth. Key to achieving this impact are improved property rights protection, data, information and knowledge availability and private sector investment. LEGEND is a critical element of DFID's economic development strategy, particularly in its efforts to:

- Help ensure women and men, as well as responsibly operating businesses enjoy, legally recognised and enforceable secure property and tenure rights.
- Improve information and knowledge to facilitate the provision of clear, transparent land-related information and knowledge, enabling rights to be identified, understood and protected.
- Improve private sector investment through the development and rollout of a standardised investment risk assessment and management methodology and implementation of best practice in land governance.

LEGEND's objectives and the actions of its partners contribute to implementation of the VGGT. As Section 1 discussed, and as explored in more detail below, several LEGEND-supported partners support implementation directly, including FAO through country workshops and Landesa in its VGGT-aligned guidance for companies, governments and CSOs. DFID has also contributed directly to key initiatives to roll the VGGT into other processes, including the New Alliance Due Diligence and the Interlaken Group.

This section highlights some of the developments of the last year that contribute to two of LEGEND's objectives:

1. improved private sector investment, focusing on tools and guidance; and
2. improved information and knowledge, focusing on issues profiled in Central Land Support Team (CLST) knowledge products and partners' knowledge-sharing initiatives.

2. Tools and approaches for improved private sector investment

In recent years, public and private actors have attempted to shift the status quo away from socially harmful, contested and unsuccessful land deals and to create an environment in which responsible investments become the norm. Part of the reason land deals have been poorly conceived and executed relates to a lack of guidance on factors to consider and steps to take to deliver responsible investment, and on how to minimise the scope for negative social impacts.

A first push by global actors established international principles and guidelines for governments, multilateral agencies and international financial institutions, as well as broader private sector actors. Table 2 presents the key guidelines and principles.

Table 2: Key guidelines and principles

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) – the leading global reference for minimum standards in land tenure governance backed by an international consensus of government, international agencies, civil society and the private sector.	The Interlaken Group's 'Respecting Land and Forest Rights: A Guide for Companies' – guidance to support companies aiming to observe and implement the VGGT. This was prepared by a multi-stakeholder forum of companies, investors, international organisations and civil society groups.
The Principles for Responsible Investment in Agriculture and Food Systems (CFS RAI), which were globally negotiated over two years between governments, the private sector and the civil society and endorsed by the CFS and UN agencies in 2014. For investments that involve acquisition, CFS RAI refers to the VGGT as the source of guidance.	The Analytical Framework for Land-based Investments in African Agriculture – a set of operational guidelines for investments made through the New Alliance for Food Security and Nutrition. This distills some of the most important principles in the VGGT and the AU GPs into a tool for companies and investment professionals.
The Guiding Principles on Large-scale Land-based Investments in Africa (AU GPs), developed by the AU Land Policy Initiative, endorsed by the AU Commission and applicable to all AU member states.	The FAO–OECD Guidance for Responsible Agricultural Supply Chains, which provides guidance to help enterprises observe standards of responsible business conduct in their agricultural supply chains. Guidance on land tenure refers back to the VGGT, the CFS RAI and the IFC performance standards.
The IFC performance standards, which set out responsibilities to which IFC investment clients must adhere in order to manage their environmental and social risks.	

In parallel with these efforts, LEGEND-supported partners have begun producing tools for stakeholders representing investors, governments and host communities. These provide guidance on what information to gather and what actions to take when negotiating, planning and implementing land investment projects in order to mitigate negative impacts. Guidance for investors aims to help investment officers and other finance professionals understand the risks and costs of bad investment practice, appealing to their needs to reduce risk and minimise the potential losses that arise from lack of adequate planning, consultation and understanding of contested land tenure.

The IAN Risk and Due Diligence tools

The IAN Risk tool targets upstream investors and risk professionals at the portfolio, company or project level. It aims to provide them with an approximation of the operational and reputational risks related to land tenure issues a planned investment is likely to face. As such, it is directed at companies that seek to make new investments in emerging markets, but have yet to commit to aligning their operations with principles of the VGGT. The tool was designed on the back of analysis of over 250 land tenure disputes in the agriculture, infrastructure and extractives sectors, which shows tenure risk is endemic to rural areas of emerging markets. Parallel analysis of satellite imagery shows 93% or more of concessions in these emerging markets host local populations, suggesting the probability of conflict is high. The tool highlights which geographic areas are likely subject to higher a *priori* tenure risk; this enables investors to screen potential investment sites and countries for multiple risks. It also highlights the level of risk deriving from existing land claims and occupation – specifically, how grievances caused by poor investment planning and engagement elevate the risk that local communities will resist land investments, either by bringing costly lawsuits or by taking direct action that can impair company operations.

The IAN Due Diligence tool provides guidance on how to engage with different constituent groups in the area surrounding an investment site before and during the investment to manage risks and minimise ensuing conflicts. The tool is based on analysis of 362 case studies, which showed that, contrary to common investor understanding, less than 7% of land disputes that involve investors are driven primarily by compensation; rather, leading factors are displacement of people and livelihood activities and

failures of engagement and consultation. This creates a need to focus due diligence on managing these broader causes of risk. The tool comprises specific components that target the agriculture, forestry, mining, hydropower and transport infrastructure sectors. For each sector, the tool offers a rationale for an expanded approach to due diligence; advice on data-gathering; specific tools, including approximate diligence timelines, budgets and specifications; and sector-specific analysis of cases studies and a detailed database of all cases covered.

Landesa RIPL tool

Landesa has started producing Responsible Investments in Property and Land (RIPL) how-to-guides, or ‘playbooks’. Starting a process of consultation with national stakeholders who are engaged in influencing the implementation of land investments, including companies operating land investments, governments and communities, these playbooks will set out the steps stakeholders need to follow to ensure investments are responsible, as defined by their compliance with international standards and principles including the VGGT. Landesa’s scoping study undertaken in Malawi, in partnership with the Illovo Group, identified gaps in tenure laws and institutions and insights on how to structure collaboration between stakeholder groups. These insights will feed into the design of two country-specific playbooks, in Ghana and Tanzania, where guidance is being piloted around specific investments. The design process has a strong focus on gender – informed by overarching RIPL gender strategy – and will also help investors in their efforts to deliver on their zero-land grab commitments.

3. Improved information and knowledge

LEGEND-supported initiatives to improve information and knowledge comprise thematic short bulletins and longer analytical papers on specific issues produced by LEGEND's CLST, and LEGEND partners' knowledge-sharing initiatives including CCSI's [Open Land Contracts](#) platform, The Land Portal Foundation's [Land Portal website](#) and the Cadasta Foundation's [land and resource rights management system](#).

3.1. Theme 1: Land acquisitions and legacy issues

The issue of large-scale land acquisitions, which has drawn attention for the past decade, has been framed largely around the acquisition of land to establish new plantations, so-called greenfield investments. In practice, however, many companies acquire existing plantations, and much land has a history of previous allocation for large-scale farming operations and may have been transacted multiple times. Many of these acquisitions have taken over plantations established by a para-statal agency or previous commercial operators. Taking the 'brownfield' route may allow investors to bypass some lengthy and unpredictable procedures they would otherwise face if establishing 'greenfield' plantations, and to avoid accusations – and the associated reputational damage – of land-grabbing. However, brownfield sites bring their own challenges: buyers may inherit disputes left unresolved by predecessors; if they persist, these legacy issues can become increasingly contested at a local or global level.

Although legacy issues are not uncommon, they have hitherto received little specific attention in either the guidance on responsible investment or the broader literature. Although the VGGT include recommendations relevant to legacy issues (including on restitution and compensation and benefit-sharing), much is left implicit.

A recent LEGEND analytical paper on '[Addressing 'legacy' land issues in agribusiness investments](#)' shines light on legacy issues and suggests ways to identify and address them. It confirms the need for investors to consider and address legacy issues, and finds that many of the same approaches that are relevant for greenfield investments should also be employed with regard to brownfield sites.

Even though a company may have a strong legal claim to a brownfield site, this may conflict with the rights of others to the same piece of land, especially when these rights derive from customary or human rights law. Nor does a legal claim provide a 'social licence to operate' if neighbouring communities dispute the legitimacy of predecessors' claim to the land, whatever its legal standing. However, the paper also finds that concerns for future welfare usually trump past grievances, and there is much that companies can do to address legitimate concerns of aggrieved communities.

Although as discussed above, the VGGT do not deal explicitly with legacy issues, other more specific guidance exists – including that of the Roundtable for Sustainable Biomaterials (RSB) – that can signpost companies as to appropriate actions to take. Reading across the guidance, the authors recommend what companies, their lenders and buyers, host governments, donors and NGOs should do to identify and respond to legacy issues in a constructive manner.

High up the to-do list for companies is revisiting their due diligence procedures to ensure these include consultation with neighbouring communities so as to broach and find solutions to legacy issues.

Lenders who are also exposed to legacy issues also need to develop better follow-up mechanisms to ensure the companies they invest in remain alert to such issues and resolve them effectively. For investors, there is a need to rethink due diligence for corporate acquisitions to identify potential legacy issues faced by the companies they are acquiring.

Likewise, donors should screen for legacy issues in the private sector partners and programmes they invest in, ensuring they possess the capacity to identify and resolve land legacy issues. This recommendation resonates with the finding of a LEGEND [review of DFID's land programmes](#), which suggests the need for scrutiny by DFID of whether companies receiving official development assistance have and use robust safeguards that ensure their investments minimise their contribution and exposure to land-related social risks.

3.2. Theme 2: Land and corruption

Corruption in land governance is a global phenomenon that occurs in both developed and developing countries, albeit at different scales and through different channels. At the most fundamental level, corruption flags an abuse of power and subverts the rules, processes and decisions framing land. It is widely agreed to be an important reason for underperformance of land institutions and programmes, and, in developing countries, is an impediment to affordable access to land for poorer households.

The VGGT acknowledge that preventing corruption is an important part of improving governance in land. Preventing corruption “in all forms, at all levels, and in all settings” is one of the five guiding principles (3A.5) the VGGT identifies for states, and it suggests states should do this through promoting transparency in processes and decision-making, and through proactively adopting and enforcing anti-corruption measures, reviewing decisions using administrative and judicial reviews, and by resourcing anti-corruption efforts and allowing staff to report corruption without retaliation (3B 6.5)

A recent LEGEND analytical paper on ‘[Tackling corruption in land governance](#)’ summarises the key evidence on corruption at the national and transnational levels and makes recommendations on how stakeholders should address these issues. It finds that corruption in land governance has come under greater scrutiny in recent years, but, paradoxically, systematic analysis of corruption in the land sector is limited. What exists suggests that petty ‘administrative’ and more sophisticated ‘grand’ corruption in land governance often thrive in the same environments, and that these environments are most common in countries with low human development indicators and where corruption is common across the public sector.

Conditions that facilitate corruption include high levels of discretionary power among land administration officials; parallel regimes for land management and institutions with overlapping mandates; non-recognition in law of established customary land rights; and extensive state power over the allocation and privatisation of public land. Land governance in urban and peri-urban areas – which see rapidly rising land values and changing land tenure regimes – is also particularly susceptible to corruption.

The land administration activities that harbour the greatest opportunities for corruption include the demarcation of boundaries, the processing of land transactions that require official authorisation and valuation exercises. Perversely, land titling schemes, which often present opportunities to clarify tenure rights, also provide openings for land-grabbing or bribery by land officials and local elites, and thus require particular scrutiny. Similarly, initiatives to attract transnational investment are often characterised by unclear legislative and regulatory frameworks that create opportunities for discretion and abuse by public officials and powerful

national and local officials. It is often the larger-scale investments involving large sums of money where corruption risks are the highest, as these become targeted by local politically-connected elites who are able to override the rights and interests of less powerful land users.

Efforts at the national level to tackle corruption in land governance work best when they are accompanied by broader institutional reforms targeting public financial management and changes to the incentive and reward structure in the public service. Important land governance-specific reforms include changing legislation to ensure land rights are recognised and recorded in land information systems; simplifying procedures to reduce discretionary power, particularly where there is evidence of abuse of discretionary power; and using moratoria on land allocation processes known to be corrupt and taking action against perpetrators.

The authors of this paper recommend national governments take action to reduce scope for corruption in land governance by accelerating recognition of multiple forms of tenure, including customary rights, by tackling procedural weaknesses in land administration, by making procedures of routine land administration and large-scale land transactions more transparent and by taking steps to increase public disclosure of the role public officials play in land transactions. Donors are urged to support anti-corruption efforts of partner countries, and to ensure the investments they make and the programmes they fund introduce corruption risk screening and mitigation measures.

The authors also urge private sector actors to take steps to implement anti-corruption measures across their operations and supply chains, and to monitor and report corruption where it occurs. However, recognising that self-regulation will not be sufficient for all actors, the authors also recommend their home countries introduce measures to extend the remit of their anti-corruption institutions to cover corruption in land governance in foreign jurisdictions, and that they engage with transnational efforts to tackle corruption and increase transparency of financial flows.

3.3. Theme 3: Land and gender

The promotion of gender equality in land relations has never had as much global political support as it has today. The VGGT provide clear statements of states’ responsibilities in ensuring that “women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status” (3B.4), “ensure that legal and policy frameworks provide adequate protection for women and that laws that recognise women’s tenure rights are implemented and enforced” (5.5.4).

The inclusion of two targets on women’s land rights in the SDGs mounts pressure on governments to begin or continue monitoring women’s land rights in data-gathering

efforts and to report against progress in these areas. New efforts are underway to capture more detail on women's land rights through national survey instruments and research projects, many of which focus on Africa. From a UK perspective, a pillar of DFID's economic development strategy is to ensure that overseas aid supporting economic growth benefits women. DFID's engagement on land through LEGEND is an important channel to ensure women also benefit from stronger land rights.¹

At times, discussions on women's land rights have been complicated by the use of flawed statistics on how much land women own, which suggest women own a tiny minority of land. In reality, much variation exists in the degree of control and decision-making over how to farm land, even if women do not have full rights to transfer or bequeath it. While the wrong statistics have often featured in the media, campaigns and the literature, a recent FAO [Technical Note](#) and [factsheet](#) explain the source of this confusion, and discuss how the lack of information on women's control of land undermines knowledge and policy recommendations. They also suggest how data gathering efforts can be improved further to provide better information into the state of women's land rights.

Beneath the discussion of the state of statistical knowledge surrounding women's access to land lie important questions about the relationship between the types and strength of rights women possess and developmental outcomes, including on poverty, productivity, nutrition and voice. The assertion that greater control over land empowers women and reduces barriers to achieving these outcomes is uncontested; however, questions remain on what types of interventions work best in different contexts. The challenge of empowering

women in difficult settings is emphasised by [recent research](#) that suggests women are often the greatest victims of corruption in land services, and where they are unable to pay cash bribes for land services, often have to provide sexual favours.

The [third LEGEND bulletin](#) emphasises the need for different approaches: 'concerted efforts at different levels – from gender-sensitive legal reform and legal empowerment for women, through to training, awareness raising and inclusive dialogue at local and national levels all the way to testing new approaches to land governance programmes'. It discusses findings from recent research which suggests that while promoting co-titling of land can be achieved relatively easily and can provide women with legal access to land, this can only be achieved through sensitising men, empowering women and power relations and changing community views and power relations.

The past year has also seen the emergence of new evidence confirming that women are often more adversely affected than menfolk by large-scale land acquisitions. As women have fewer rights over land, and are afforded a lesser role in decision-making in many of the communities that large-scale land acquisitions target, they are less likely to be invited to participate in discussions that determine how land transfers unfurl or to benefit from so-called inclusive projects. The land they depend on is thus less likely to be exempted from transfer. Commonly overlooked as sources of women's (and community) food and economic assets are common lands such as forests, which are often more eagerly transferred than farmlands, which are often male-controlled.



Photo: Indonesia, 2009. ©Center For International Forestry Research/Hari Priyadi

¹ An often-cited but misleading statistic is that women own only 2% of the world's farmland. See here for discussion.

3.4. LEGEND-supported knowledge-sharing initiatives

The **Open Land Contracts** platform developed by CCSI offers a tool that presents – in searchable and accessible format – over 70 contracts drawn up between parties for acquiring land in developing countries. Contracts are accompanied by annotations that provide plain language explanations of the legal contents that make the contracts more accessible to laypeople as well as to researchers and professionals. CCSI aims to add new contracts to the database and include more documents related to the contracts, such as environmental assessments. [A Guide to Land Contracts for Agricultural Projects](#) – drawn up by a group of senior lawyers – clarifies the legal terminology and explains clauses commonly found in agricultural contracts. CCSI has also published [guidance](#) to address dilemmas concerning land deals, human rights, grievances and investor protection.

The **Land Portal** is working with partners to collect and manage information on land at the country level and to increase the diversity and quality of the information its website offers. It intends to create an ‘ecosystem’ of land information providers at the country and regional level that are linked to each other. The **Cadasta Foundation** is establishing the [Cadasta Platform](#), an open digital platform and open mapping for recording land and resource rights. The Cadasta Foundation aims to provide tools that can be

accessed for the 70% of rights-holders whose rights do not feature in formal systems and to create a community that will share data and information.

3.5. LEGEND Challenge Fund

In addition to the work of LEGEND partners outlined above, a LEGEND Challenge Fund launched in September 2015 identifies and supports projects interested in testing innovative approaches to ensure that agricultural investors act responsibly and assist in developing partnerships with rural communities. The Challenge Fund will support applicants in African countries to trial implementation of the [Analytical Framework for Land-Based Investments in African Agriculture](#), the so-called the New Alliance Due Diligence tool, or alternative innovative approaches to responsible land-based investment that are consistent with the principles of the VGGT. Successful applicants are expected to build partnerships between civil society and the private sector that promote better understanding and collaborative learning on how to implement responsible investments.

Details on the LEGEND CLST products and the LEGEND Challenge Fund are available on the Land Portal’s [LEGEND page](#).



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Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants, MoUs and contracts, and supported by a Core Land Support Team.

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